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December 4, 2003

**VIA HAND DELIVERY**

Ms. Cheryl Goodman  
Trademark Trial and Appeal Board  
United States Patent and Trademark Office  
2900 Crystal Drive  
Arlington, VA 22202-3514

Re: Pucel Enterprises, Inc. v. Grizzly Industrial, Inc.  
Cancellation No. 31,984, Mark: GRIZZLY  
Cancellation No. 32,024, Mark: GRIZZLY  
Cancellation No. 32,025, Mark: GRIZZLY INDUSTRIAL  
Opposition No. 123,506, Mark: GRIZZLY.COM

Dear Ms. Goodman:

In response to your request, we enclose a complete copy of the Motion to Compel filed December 27, 2002, including exhibits.

Sincerely yours,

MICHAEL BEST & FRIEDRICH LLC



Lisa C. Childs

LCC/rls

Enclosure

cc: Ken Mitchell (w/o enc.)  
Joseph F. Schmidt (w/o enc.)

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**BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD  
IN THE UNITED STATES PATENT AND TRADEMARK OFFICE**

PUCEL ENTERPRISES, INC.

Petitioner,

v.

GRIZZLY INDUSTRIAL, INC.

Respondent.

**CONSOLIDATED**

Opposition No. 123,506

Cancellation No. 31,984

Cancellation No. 32,024

Cancellation No. 32,025

Mark: GRIZZLY.COM

Mark: GRIZZLY

Mark: GRIZZLY

Mark: GRIZZLY INDUSTRIAL

**GRIZZLY INDUSTRIAL, INC.'S MOTION TO COMPEL DISCOVERY**

Grizzly Industrial, Inc. ("Grizzly") seeks to compel Pucel Enterprises, Inc. ("Pucel") to respond to and/or supplement its responses to certain interrogatories and requests for production of documents and things as set forth more fully hereinafter. This discovery was initially served over 15 months ago in August 2001. In many instances, Pucel did not provide information or documents but rather asserted that certain information would not be available without a protective order and certain documents and things would only be available for inspection at its Ohio facilities. Although the parties agreed to the form of the protective order in April 2002, Pucel has never adequately<sup>1</sup> supplemented its discovery or provided all promised documents for inspection.

**STATEMENT OF FACTS**

Pucel filed three petitions for cancellation and two notices of opposition in May 2001. Four of these actions were subsequently consolidated into the present case. In August 2001, before the actions were consolidated, Grizzly served interrogatories and document requests with respect to each mark at issue. This discovery was essentially identical in each of the actions, as was Pucel's response.

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<sup>1</sup> On June 27, 2002, Pucel supplemented one of its responses to interrogatories by identifying an additional fact witness.

Pucel made two basic promises in response to Grizzly's discovery: (1) it would supplement its responses if a protective order were agreed to and (2) it had additional documents that could only be inspected at its Ohio facilities. Despite the agreed-to protective order and Grizzly's willingness to inspect these documents, neither of these promises has been properly fulfilled. In addition, as set forth below with reference to each of the disputed interrogatories and document requests, Pucel's responses are also inadequate.

As required by 37 CFR 2.120(e) and TBMP 523.02, copies of the interrogatories with answers, supplemental answers and objections are attached as Exhs. 1-5; copies of the requests for production and Pucel's proffer of production or objection to production are attached as Exhs. 6-9; and the brief description of documents or things that were not produced in response follows below as is a description of Pucel's inadequate responses to interrogatories.

#### **A. INTERROGATORIES**

Interrogatory No. 5(d). The identification of documents which relate to Pucel's knowledge of Grizzly's trademarks as "catalogs, various publications and websites" should be made with sufficient specificity that the documents can be identified.

Interrogatory No. 7. Pucel should identify the trade channels with more specificity. Pucel's response states only "Channels of trade – through distributors, dealers and end users, through distribution of catalogs, brochures flyers, internet web site and by direct contact with these distributors, dealers and end users." What kind of distributors, dealers and end users? To whom are the catalogs, brochures, and flyers sent?

Interrogatory No. 8. Pucel's explanation of "all methods of advertising and all types of media used to advertise and promote the products in connection with which Opposer uses the mark GRIZZLY" that it uses "[d]irectories, display ads in publications, internet web site, catalogs, brochures, flyers, photos" is inadequate. These materials should be described with specificity, including, for example, the names of the directories and publications; dates of each such directory, publication, catalog, brochure, flyer, or photo; size of ads; circulation of catalogs, brochures, flyers, and photos; number of hits on the web site each month since its creation; and the like.

Interrogatory No. 9. Pucel's refusal to provide its advertising and promotion costs prior to 1991 because they are "not readily available" is inadequate. If the information is available, it should be provided. TBMP 412.02.

Interrogatory No. 10. Pucel has not supplemented its response by providing the confidential information relating to gross annual dollar sales it referred to in its initial response.

Interrogatory No. 11. Pucel has not identified "the companies having GRIZZLY as part of their names," despite having acknowledged their existence. TBMP 419(9).

Interrogatory No. 12. All that Pucel has provided is the name of two companies, without explaining any of the details sought by this interrogatory. The response should include all documents (if any), identified by document control number, referred to in Pucel's response. Pucel has not provided a time for inspection and copying the additional documents referred to in response to this request. In addition, the response should comply with the rules, *i.e.*, names of parties, the jurisdiction, proceeding number, outcome, and the citation. TBMP 419(10).

Interrogatory No. 13. Pucel's October 1, 2001 description of "each instance of confusion, likelihood of confusion, mistake or deception" is inadequate. A narrative explaining what happened and the identities of the persons involved should be provided, rather than the cryptic shorthand used. Pucel has not provided a time for inspection and copying the additional documents referred to in response to this interrogatory.

Interrogatory No. 15. Pucel has not identified or provided a time for inspection and copying all the additional documents referred to in response to this interrogatory.

**B. DOCUMENT REQUESTS**

Pucel has failed its "duty to thoroughly search its records for all information properly sought in the request . . . " TBMP 412.02. Instead, it has, under pressure from Grizzly, proffered approximately 200 boxes or 80,000 to 100,000 documents in Cleveland, of which Pucel's counsel only "spot checked" one or two boxes. In fact, in a telephone conference with Pucel's counsel on Friday, December 13, 2002, before the inspection on Monday, December 16, 2002, Pucel's counsel stated that there would "probably" be irrelevant materials, "but I don't know because I haven't looked." Pucel's counsel also refused to allow inspection of the goods being sold under the trademarks while Grizzly's counsel was at Pucel's manufacturing facility in Cleveland, stating that they are in the catalog. In addition, Pucel has refused to allow adequate time to inspect the documents or, even, to allow Grizzly to copy the documents so they can be digested in the fullness of time. As it turned out, these two hundred boxes were forty years of

invoices. Although Pucel has asserted other relevant documents exist, it has not produced them nor allowed Grizzly to inspect them. Pucel should have produced these documents while Grizzly was in Cleveland.

The description of the materials not proffered in response to document requests follows:

Document Request No. 1. Pucel has not adequately identified (e.g., by box or location) the additional documents referred to in response to this request. Pucel has also not identified by document control number any of the documents allegedly produced in response to this request.

Document Request No. 2. Pucel has not adequately identified (e.g., by box or location) the additional documents referred to in response to this request. Pucel has also not identified by document control number any of the documents allegedly produced in response to this request.

Document Request No. 3. Pucel has not adequately identified (e.g., by box or location) the additional documents referred to in response to this request. Pucel has also not identified by document control number any of the documents allegedly produced in response to this request. Regardless of whether certain of the documents requested may be available from the PTO, Pucel has an obligation to produce relevant documents that are in Pucel's possession or control.

Document Request No. 4. Regardless of whether certain of the documents requested may be available from the PTO, Pucel has an obligation to produce relevant documents that are in Pucel's possession or control. Pucel's position appears to be that it has no other documents that relate to state or federal trademark registrations or applications for GRIZZLY and GRIZZLY BEAR SYMBOL besides those held by the USPTO.

Document Request No. 5. Pucel has not provided a privilege log. Pucel has also not identified by document control number any of the documents allegedly produced in response to this request.

Document Request No. 9. Pucel has not adequately identified (e.g., by box or location) the additional documents referred to in response to this request. Pucel has also not identified by document control number any of the documents allegedly produced in response to this request.

Document Request No. 11. Pucel has not identified or provided the confidential documents ("annual reports") referred to in Pucel's response to this request.

Document Request No. 12. Pucel has not identified or provided the confidential documents ("annual reports") referred to in Pucel's response to this request.

Document Request No. 13. Pucel has not adequately identified (e.g., by box or location) the additional documents referred to in response to this request. Pucel has also not

identified by document control number any of the documents allegedly produced in response to this request.

Document Request No. 15. Pucel has not identified by document control number any of the documents allegedly produced in response to this request.

Document Request No. 16. Pucel has not identified by document control number any of the documents allegedly produced in response to this request.

Document Request No. 17. Pucel has not identified by document control number any of the documents allegedly produced in response to this request.

Document Request No. 18. Pucel has not adequately identified (e.g., by box or location) the additional documents referred to in response to this request.

Document Request No. 20. Pucel has not adequately identified (e.g., by box or location) the additional documents referred to in response to this request.

Document Request No. 21. Pucel has not adequately identified (e.g., by box or location) the additional documents referred to in response to this request.

Document Request No. 22. Pucel has not adequately identified (e.g., by box or location) the additional documents referred to in response to this request.

### **C. GOOD FAITH EFFORTS**

Counsel for Grizzly has made a good faith effort since March 2002, both by conference and by correspondence, to resolve the issues presented, but has been met with unfulfilled promises and refusals to identify the requested materials and supplement the interrogatory responses. See the attached Statements of Good Faith Efforts and accompanying exhibits thereto.

Pucel has been delaying its responses to Grizzly's discovery requests, including the following:

- On the afternoon of December 6, 2002, almost two months after proceedings resumed and less than a month before discovery is set to close, Pucel offered December 16 and 17, 2002 as dates on which Grizzly's counsel can inspect documents (approximately 200 boxes) at Pucel's facility, allowing Grizzly just five business days to plan.

- Pucel declined to provide any alternate dates stating that “discovery was about to close” obviously implying that Pucel is not agreeable to extending discovery. Now that Pucel has Grizzly’s documents, Grizzly’s supplemental responses to Pucel’s discovery, and has taken Grizzly’s deposition, Pucel is attempting to subvert Grizzly’s efforts to discovery Pucel’s information and documents.
- On December 16, 2002, Pucel’s counsel admitted it has additional, responsive documents, but did not proffer them for inspection while Grizzly was in Cleveland, and also refused to allow inspection of the products on site.
- On December 13, 2002, Pucel’s counsel admitted that he had inspected less than 1% of the materials that he was finally putting forth as responsive to Grizzly’s document requests and that there would “probably” be irrelevant material.
- The two hundred boxes inspected on December 13, 2002 consisted only of invoices.
- Pucel’s counsel has ignored the remainder of its admitted obligations to supplement its discovery responses.
- While Grizzly copied and delivered thousands of documents to Pucel, Pucel refused to even allow Grizzly to use Pucel’s photocopier and only grudgingly offered the use of its heated office to inspect one (of the two hundred) boxes at a time.
- Since May 2002, Pucel has repeatedly promised to supplement its discovery responses, but at the filing of this motion has not done so other than allowing Grizzly to inspect the invoices on December 16, 2002.
- Grizzly served additional interrogatories, document requests, and requests for admission on Pucel on August 5, 2002 (prior to receiving the Board’s stay order), and to date, Pucel has not responded nor even indicated when it will respond.

- Since May, 2002, Pucel has promised to produce confidential documents and information.

Despite the existence of the protective order, Pucel has not done so.

Such tactics should not be condoned.

### **ARGUMENT**

Pucel's document production is admittedly inadequate. Both its responses and its counsel concede the existence of other, relevant, unproduced documents and things. Pucel's refusal to inspect the boxes in order to identify the materials that are relevant to Grizzly's discovery requests is a clear violation of the rules requiring the party to "thoroughly search its records for all information properly sought in the request, and to provide such information to the requesting party." TBMP 412.02. Grizzly seeks to preclude Pucel from relying on any information from its records that Pucel failed to identify with particularity. TBMP 412.02. Likewise, Pucel's repeated failure to supplement its interrogatory responses, although it acknowledged its need to do so, should result in barring Pucel from relying on any of the information sought by these interrogatories. In the alternative, Pucel should be compelled to provide the information and documents requested.

### **REQUESTED RELIEF**

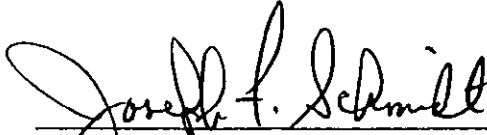
Pucel has repeatedly promised to cooperate in discovery, but then failed, without explanation, to actually provide any of the information promised. Accordingly, the Board should enter an order either barring Pucel's reliance on any information or documents it has not provided to Grizzly or compelling Pucel to fully answer, without objection, Grizzly's interrogatories and document requests within fifteen (15) days from the date of such order. See *Envirotech Corp. v. Compagnie Des Lampes*, 219 U.S.P.Q. 448, 450 (TTAB 1979); *Crane Co. v. Shimano Indus. Co., Ltd.*, 184 U.S.P.Q. 691, 692 (TTAB 1975).



**CONCLUSION**

For the foregoing reasons, Grizzly's motion should be granted.

December 27, 2002



Joseph F. Schmidt

Lisa C. Childs

MICHAEL BEST & FRIEDRICH LLC  
401 North Michigan Avenue, Suite 1900  
Chicago, IL 60611  
(312) 661-2100  
(312) 222-0818 (fax)

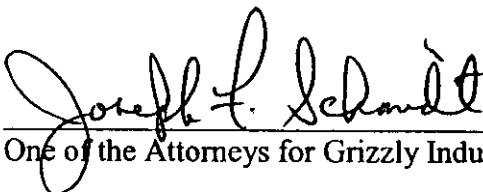
Attorneys for Respondent  
Grizzly Industrial, Inc.

**CERTIFICATE OF SERVICE**

I hereby certify that a true and correct copy of the foregoing GRIZZLY INDUSTRIAL, INC.'S MOTION TO COMPEL DISCOVERY was served on

Charles R. Rust  
Kenneth L. Mitchell  
Woodling, Krost and Rust  
9213 Chillicothe Road  
Kirtland, OH 44094

via first class mail, postage prepaid, this 27th day of December, 2002.

  
\_\_\_\_\_  
One of the Attorneys for Grizzly Industrial, Inc.

S:\CLIENT\205670\9004\0172245.1

**BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD  
IN THE UNITED STATES PATENT AND TRADEMARK OFFICE**

PUCEL ENTERPRISES, INC.  
Petitioner,

v.

GRIZZLY INDUSTRIAL, INC.  
Respondent.

**CONSOLIDATED**

Opposition No. 123,506	Mark: GRIZZLY.COM
Cancellation No. 31,984	Mark: GRIZZLY
Cancellation No. 32,024	Mark: GRIZZLY
Cancellation No. 32,025	Mark: GRIZZLY INDUSTRIAL

**STATEMENT OF GOOD FAITH EFFORT**

I, Joseph F. Schmidt, attorney for Grizzly Industrial, Inc. ("Grizzly") state the following of my own personal knowledge in support of Respondent's Motion to Compel Discovery:

1. On December 6, 2002, November 15, 2002, October 29, 2002, August 2, 2002, April 10, 2002, and March 8, 2002, I, or my co-counsel, sent letters via facsimile to Pucel's counsel requesting that Pucel's discovery responses be supplemented. (Exhs. A, B, C, D, E, and F).

2. Pucel initially responded by agreeing to provide such supplements in May, 2002. (Exh. G). Pucel's counsel further left telephone messages in which he confirmed his intent.

3. In addition, I had a face-to-face conference with Pucel's counsel on Wednesday, November 20, 2002 after the 30(b)(6) deposition of respondent, at which time Pucel's counsel again promised to supplement Pucel's discovery.

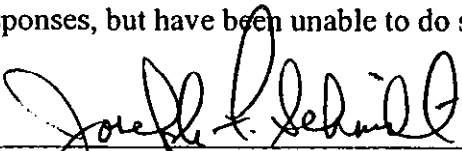
4. Nonetheless, Pucel has failed to properly supplement its discovery.

5. Instead, on December 9, 2002, Pucel offered the inspection of 200 boxes of documents at petitioner's place of business, which I discovered upon inspection by my co-counsel contained only invoices and account receivable information.

6. Pucel's counsel admitted that there were additional relevant documents but that such documents were not being produced for inspection at that time.

7. I have made a good faith effort, by conference and by correspondence, to resolve Pucel's failure to supplement its discovery responses, but have been unable to do so.

December 27, 2002

  
\_\_\_\_\_  
Joseph F. Schmidt  
MICHAEL BEST & FRIEDRICH LLC  
401 North Michigan Avenue, Suite 1900  
Chicago, IL 60611  
(312) 661-2100  
(312) 222-0818 (fax)

Attorney for Respondent  
Grizzly Industrial, Inc.

S:\CLIENT\205670\9004\0172353.1

December 6, 2002

**VIA FACSIMILE**

Mr. Kenneth L. Mitchell  
Woodling, Krost and Rust  
Kirtland Office Complex  
9213 Chillicothe Road  
Kirtland, OH 44094

Re: Grizzly Industrial v. Pucel Enterprises

Dear Ken:

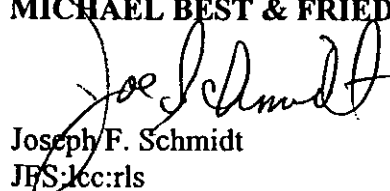
Further to our letters of November 15, 2002, October 29, 2002, August 2, 2002, April 10, 2002, and March 8, 2002, you have not supplemented Pucel's responses to Grizzly's initial discovery. Nor have you provided any dates certain on which you will supplement Pucel's responses, many of which you have acknowledged are incomplete, despite your most recent promise to do so in our face-to-face conference Wednesday, November 20, 2002.

We believe that we have made good faith efforts, both by conference and by correspondence, but have reached an impasse with you, in large part because you either promise materials that are never provided or simply ignore our requests.

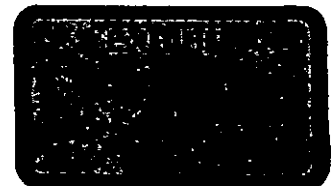
Nonetheless, even though Pucel's supplemental responses are more than six (6) months overdue, we will defer filing a motion to compel until December 13, 2002. If, prior to that date, you provide dates certain as to when you will supplement Pucel's discovery responses, including dates when documents can be inspected at Pucel's offices, we will not file the motion to compel.

Sincerely,

**MICHAEL BEST & FRIEDRICH LLC**

  
Joseph F. Schmidt  
JFS:lcc:rls

cc: Lisa C. Childs



November 15, 2002

**VIA FACSIMILE**

Mr. Kenneth L. Mitchell  
Woodling, Krost and Rust  
Kirtland Office Complex  
9213 Chillicothe Road  
Kirtland, OH 44094

Re: Grizzly Industrial v. Pucel Enterprises

Dear Ken:


Notwithstanding your agreement to do so, we note that you have not supplemented Pucel's responses to Grizzly's initial discovery, as requested in our letters of March 8, 2002, April 10, 2002, August 2, 2002 and October 29, 2002.

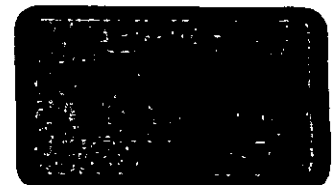
As you know, the TTAB reactivated the case on October 15, 2002. Moreover, the TTAB's order suspending proceedings specifically noted that it did not toll the time to respond to discovery served prior to the filing of the motion to compel.

In view of our repeated requests, and since Pucel's supplemental responses are more than six (6) months overdue, we expect that no later than November 22, 2002, you provide dates certain as to when you will supplement Pucel's discovery responses, including dates when documents can be inspected at Pucel's offices.

Sincerely,

**MICHAEL BEST & FRIEDRICH LLC**

  
Joseph F. Schmidt  
JFS:lcc:rls



October 29, 2002

**VIA FACSIMILE**  
**With Confirmation via U.S. Mail**

Mr. Kenneth L. Mitchell  
Woodling, Krost and Rust  
Kirtland Office Complex  
9213 Chillicothe Road  
Kirtland, OH 44094

Re: Grizzly Industrial v. Pucel Enterprises

Dear Mr. Mitchell:

This is in response to your telephone call of October 22, 2002, in which you indicated that you wanted to take Mr. Balolia's deposition on November 25, 2002. Mr. Balolia is not available on November 25, but is available on November 20, 2002. **Let me know as soon as possible if you want to proceed on November 20 so I can ask Mr. Balolia to keep that date available.**

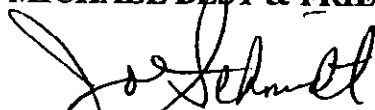
Regardless of the date on which the deposition is taken, let me know where you plan on taking the deposition, the starting time, and the name of the local firm that you may use.

Now that these proceedings are active again, let me know when you plan to supplement Pucel's discovery responses as requested in our letters of March 8, 2002, April 10, 2002, and most recently, August 2, 2002, including the confidential information and documents that you withheld pending entry of the protective order, dates when we can inspect and copy Pucel's documents in Ohio, and supplemental responses to various interrogatories and document requests as set forth in my letter of August 2, 2002.

I look forward to your response.

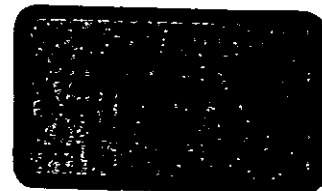
Sincerely,

**MICHAEL BEST & FRIEDRICH LLC**



Joseph F. Schmidt  
JFS:mmr

cc: Lisa Childs



August 2, 2002

**VIA FACSIMILE**  
**With Confirmation via U.S. Mail**

Mr. Kenneth L. Mitchell  
Woodling, Krost and Rust  
Kirtland Office Complex  
9213 Chillicothe Road  
Kirtland, OH 44094

Re: Grizzly Industrial v. Pucel Enterprises

Dear Mr. Mitchell:

Further to our letters of April 10 and March 8, 2002, we are in receipt of Pucel's Supplemental Response to Applicant's First Set of Interrogatories in both Opposition No. 123,136 (BEAR POWER) and the consolidated proceedings, which you had promised to supplement by May 10. Each of the Supplemental Responses (served June 27, 2002) supplement *only* Pucel's response to Interrogatory No. 19 by identifying certain fact witnesses.

As set out in our April 10 and March 8 letters, Pucel's written responses themselves acknowledged that they were deficient in view of

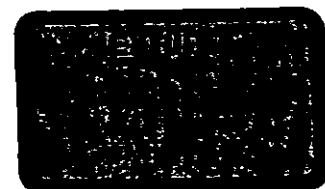
(a) certain confidential information that was being withheld and

As the Protective Order has been agreed to, it is inappropriate for Pucel to continue to withhold the confidential information.

(b) certain documents that were available only for inspection and copying at Pucel's offices.

We are still awaiting your setting the date for inspection and copying of the additional documents. (See, for example, our May 17, 2002 letter.)

In addition, Pucel's responses to Grizzly's document requests failed to identify any documents with particularity. In view of the scanty and disorganized production, we expect that you will supplement each request as set out below.





Mr. Kenneth L. Mitchell  
August 2, 2002  
Page 2

We identify the following outstanding issues with respect to *each* of the five sets of Grizzly's interrogatories and document requests which were not addressed by the June 27 Supplemental Responses.

### **INTERROGATORIES**

Interrogatory No. 5(d). The identification of documents which relate to Pucel's knowledge of Grizzly's trademarks as "catalogs, various publications and websites" should be made with sufficient specificity that the documents can be identified.

Interrogatory No. 7. Pucel should identify the trade channels with more specificity. Pucel's response states only "Channels of trade – through distributors, dealers and end users, through distribution of catalogs, brochures flyers, internet web site and by direct contact with these distributors, dealers and end users." What kind of distributors, dealers and end users? To whom are the catalogs, brochures, and flyers sent?

Interrogatory No. 8. Does Pucel plan to rely on its explanation of "all methods of advertising and all types of media used to advertise and promote the products in connection with which Opposer uses the mark GRIZZLY" that it uses "[d]irectories, display ads in publications, internet web site, catalogs, brochures, flyers, photos"?

Interrogatory No. 9. Is it your position that Pucel does not intend to provide its advertising and promotion costs prior to 1991 because they are "not readily available"?

Interrogatory No. 10. Pucel has not yet supplemented its response by providing the confidential information relating to gross annual dollar sales it referred to in its initial response.

Interrogatory No. 11. Pucel has not yet identified "the companies having GRIZZLY as part of their names," despite having acknowledged their existence.

Interrogatory No. 12. All that Pucel has provided is the name of two companies, without explaining any of the details sought by this interrogatory. Please identify by document control number all documents (if any) referred to in Pucel's response. Pucel has not provided a time for inspection and copying the additional documents referred to in response to this request. In addition, please supplement this response so that it complies with the rules, *i.e.*, names of parties, the jurisdiction, proceeding number, outcome, and the citation.

Interrogatory No. 13. Does Pucel intend to provide any additional description in response to this interrogatory or to rest on its October 1, 2001 description of "each

Mr. Kenneth L. Mitchell  
August 2, 2002  
Page 3

instance of confusion, likelihood of confusion, mistake or deception"? Pucel has not provided a time for inspection and copying the additional documents referred to in response to this request.

Interrogatory No. 15. Pucel has not provided a time for inspection and copying all the additional documents referred to in response to this interrogatory.

### **DOCUMENT REQUESTS**

Document Request No. 1. Pucel has not provided a time for inspection and copying the additional documents referred to in response to this request. Pucel has also not identified by document control number any of the documents produced in response to this request.

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Document Request No. 4. Regardless of whether certain of the documents requested may be available from the PTO, Pucel has an obligation to produce relevant documents that are in Pucel's possession or control. Is it your position that Pucel has no other documents that relate to state or federal trademark registrations or applications for GRIZZLY and GRIZZLY BEAR SYMBOL besides those held by the USPTO?

Document Request No. 5. Pucel has not provided a privilege log. Pucel has also not identified by document control number any of the documents produced in response to this request.

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Document Request No. 11. Pucel has not provided the confidential documents ("annual reports") referred to in Pucel's response to this Request.

Mr. Kenneth L. Mitchell  
August 2, 2002  
Page 4

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Document Request No. 13. Pucel has not provided a time for inspection and copying the documents referred to in this request. Pucel has also not identified by document control number any of the documents produced in response to this request.

Document Request No. 15. Pucel has not identified by document control number any of the documents produced in response to this request.

Document Request No. 16. Pucel has not identified by document control number any of the documents produced in response to this request.

Document Request No. 17. Pucel has not identified by document control number any of the documents produced in response to this request.

Document Request No. 18. Pucel has not provided a time for inspection and copying the documents referred to in this request.

Document Request No. 20. Pucel has not provided a time for inspection and copying the documents referred to in this request.

Document Request No. 21. Pucel has not provided a time for inspection and copying the documents referred to in this request.

Document Request No. 22. Pucel has not provided a time for inspection and copying the documents referred to in this request.

Please confirm or clarify by return facsimile by providing a date certain by which we can expect your substantive responses on these issues.

Sincerely yours,

**MICHAEL BEST & FRIEDRICH LLC**



Lisa C. Childs  
LCC:bms:rls

cc: Joseph F. Schmidt  
S:\CLIENT\205670\9004\VC0125670.1

April 10, 2002

**VIA FACSIMILE**

Kenneth L. Mitchell, Esq.  
Woodling, Krost and Rust  
Ohio Savings Plaza  
1801 East Ninth Street, Suite 1520  
Cleveland, OH 44114

Re: Pucel Enterprises, Inc. v. Grizzly Industrial, Inc.  
Consolidated Opposition Nos. 123,506 and 123,136

Dear Ken:

Enclosed is a draft Protective Order By Consent which incorporates your requested changes. Please return the signed Order and we will submit it to the Trademark Trial and Appeal Board.

Now that you have agreed to the protective order, and further to my letter of March 8, 2002, please let us know when you expect to produce the confidential documents and serve the supplemental interrogatory responses referred to in Pucel's initial responses to Interrogatory No. 10, and Document Request Nos. 11, 12.

We identify the following other outstanding issues in each of Pucel's responses to Grizzly's five sets of document requests and interrogatories.

In response to Interrogatory No. 11, we request that Pucel identify the "companies having GRIZZLY as part of their names."

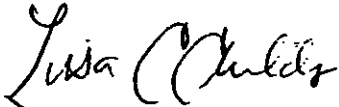
In response to Request for Production Nos. 1, 13, 18, 20, 21, 22, and 23 (as well as several other document requests incorporating Pucel's response to Request No. 1), Pucel stated that other responsive documents "will be produced at the Pucel offices in Cleveland, Ohio for inspection and possible copying." We would like to arrange a time for such inspection and copying.

Kenneth L. Mitchell, Esq.  
April 10, 2002  
Page 2

With respect to Request for Production No. 5, we look forward to Pucel's privilege log.

Sincerely yours,

MICHAEL BEST & FRIEDRICH LLC



Lisa C. Childs

LCC/rls

Enclosure

cc: Joseph F. Schmidt

**MICHAEL BEST  
& FRIEDRICH LLC**  
*Attorneys at Law*

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401 North Michigan Avenue  
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Lehigh Valley, Pennsylvania

Writer's Direct Line: 312-681-7337  
Email: lcchilds@mbf-law.com

March 8, 2002

Kenneth L. Mitchell, Esq.  
Woodling, Krost and Rust  
Ohio Savings Plaza  
1801 East Ninth Street, Suite 1520  
Cleveland, OH 44114

Re: Pucel Enterprises, Inc. v. Grizzly Industrial, Inc.  
Consolidated Opposition Nos. 123,506 and 123,136

Dear Ken:

Further to Pucel's response to Grizzly's document requests and interrogatories in which Pucel indicated that certain "confidential business information" would be produced by Pucel "subject to a suitable protective order," we enclose a draft Protective Order for your review and signature.

Please let us know when you expect to produce the confidential documents and supplemental interrogatory responses.

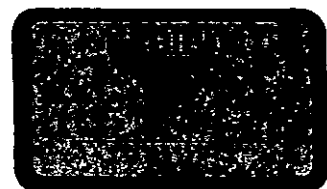
Sincerely yours,

MICHAEL BEST & FRIEDRICH LLC



Lisa C. Childs  
LCC/rls  
Enclosure

cc: Joseph F. Schmidt  
S:\CLIENT\205670\9004\CO086901



**Woodling, Krost and Rust**

**Attorneys and Counselors at Law**

KIRTLAND OFFICE COMPLEX  
9219 CHILLICOTHE ROAD  
(STATE ROUTE 306)

**Kirtland, Ohio 44094**

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E-MAIL  
CLEVEPAT@AOL.COM

**PATENTS  
TRADEMARKS  
COPYRIGHTS  
PATENT CAUSES**

May 3, 2002

Joseph F. Schmidt  
Michael Best & Friedrich LLC  
401 N. Michigan Avenue  
Suite 1700  
Chicago, Illinois 60611-4274

*Via Fax: 312-661-0029*

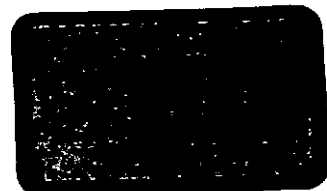
Re: Our Dockets 8041; Opposition No. 123,136; and,  
Consolidated Opposition and Cancellations, No. 123,506;  
Discovery Matters

Dear Joe:

I have reviewed the voluminous documents that you have produced. Document nos. 1-175 represent file histories. Documents nos. 177- 4693 represent catalogs of Grizzly Industrial, Inc. and its predecessor Grizzly Imports, Inc. Documents nos. 4694-8651 represent advertisements of Grizzly Industrial and its predecessor.

I do not believe that you have responded to our document requests in writing as required other than the production of the voluminous documents. Would you please respond to our document requests in writing and would you please identify which documents respond to which requests. If there are documents to be inspected, please advise immediately and we will make arrangements for the inspection and copying at your client's Bellingham (or other) facilities.

Would you send us the responses to the interrogatories and responses to our requests immediately so that we may use them to prepare for the deposition(s) of your client. We note your letter dated March 4, 2002 and would like to take the discovery deposition(s) of your client in Bellingham, Washington, beginning June 3, 2002 at 9 am. Alternatively, and, preferably, we would like to take the deposition(s) of your client beginning June 17, 2002 at 9 am. We don't know how many days we will need for the 5 proceedings, 4 of which are consolidated until we have your discovery responses. If we do not receive the responses to our interrogatories and requests to enable our preparation for the deposition, we will have to extend discovery. If we cannot agree as to the duration of the deposition(s) (which we will most likely notice under Fed. R. Civ. P. 30(b)(6)), we



Woodling, Krost and Rust

Mr. Joseph Schmidt, Esq.

May 3, 2002

Page 2

will file a motion for additional time under Fed. R. Civ. P. 30(d)(2) and 26(b)(2).

In regard to Lisa Childs' March 8, 2002 and April 10, 2002 letters, we will supplement our responses to your interrogatories on Friday, May 10, 2002. You may inspect additional documents at our client's facilities in Cleveland, Ohio on May 16, 2002.

We would like to again thank you and Lisa Childs for your cooperation and professionalism in this matter. I look forward to meeting you both personally. If you have any questions, please call.

Very Truly Yours,

Woodling, Krost and Rust



Kenneth L. Mitchell

KLM/krm

c: Mr. Anthony Miakar



**BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD  
IN THE UNITED STATES PATENT AND TRADEMARK OFFICE**

PUCEL ENTERPRISES, INC.  
Petitioner,

v.

GRIZZLY INDUSTRIAL, INC.  
Respondent.

**CONSOLIDATED**

Opposition No. 123,506	Mark: GRIZZLY.COM
Cancellation No. 31,984	Mark: GRIZZLY
Cancellation No. 32,024	Mark: GRIZZLY
Cancellation No. 32,025	Mark: GRIZZLY INDUSTRIAL

**STATEMENT OF GOOD FAITH EFFORT**

I, Lisa C. Childs, attorney for Grizzly Industrial, Inc. ("Grizzly") state the following of my own personal knowledge:

1. On December 13, 2002, I had a teleconference with Pucel's counsel regarding the inspection of 200 boxes of documents at Pucel's manufacturing facility on December 16 and 17, 2002.

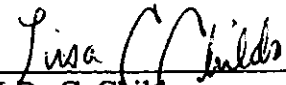
2. In this teleconference, Pucel's counsel refused to allow inspection of any of its products purportedly sold under its trademarks.

3. Pucel's counsel also stated that there would "probably" be some irrelevant material, "but I don't know because I haven't looked."

4. Pucel's counsel admitted that only two boxes of the two hundred had been "spot-checked".

5. I have made a good faith effort, by conference and by correspondence, to resolve the issues presented with Pucel's counsel and have been unable to reach agreement.

December 20, 2002

  
\_\_\_\_\_  
Lisa C. Childs  
MICHAEL BEST & FRIEDRICH LLC  
401 North Michigan Avenue, Suite 1900  
Chicago, IL 60611  
(312) 661-2100  
(312) 222-0818 (fax)

Attorney for Respondent  
Grizzly Industrial, Inc.

S:\CLIENT\205670\9004\CO174646.1

JFS  
9/1

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE  
Before The Trademark Trial and Appeal Board

PUCEL ENTERPRISES, INC.	)	
	)	
	)	
Petitioner,	)	Cancellation No. 31,984
	)	Reg. No. 2,166,833
v.	)	
	)	
GRIZZLY INDUSTRIAL, INC.	)	
	)	
	)	
Respondent.	)	

**PETITIONER'S (PUCEL ENTERPRISES, INC.) RESPONSE TO  
RESPONDENT'S FIRST SET OF INTERROGATORIES**

Petitioner, **Pucel Enterprises, Inc. (Pucel)**, in accordance with Rule 33 of the Federal Rules of Civil Procedure and 37 CFR §2.120 responds to Respondents', **Grizzly Industrial, Inc. (Grizzly)**, first set of interrogatories as follows:

**PRELIMINARY STATEMENT**

Petitioner responds to these interrogatories, preserving:

A. All objections and/or questions as to competency, relevancy, materiality, privilege and admissibility as evidence for any purpose with regard to the answer or the subject matter thereof, in any subsequent proceeding, in or at the trial of, this or any other action;



B. The right to object to the use of any said answers or the subject matter thereof, in any subsequent proceeding in, or trial of, this or any other action;

C. The right to object on any ground at any time to a demand for further response to these or any other interrogatory; and

D. The right at any time to revise, correct, add to, or clarify any of the answers submitted herein.

#### General Objections

1. Certain of the information and identification of documents sought by Respondent, constitute confidential business information of **Pucel**. **Pucel** objects to the disclosure of such information or documents to Respondent on the ground that disclosure of such information to Respondent would damage **Pucel**. In respect to information objected to only on this basis, **Pucel** is willing to produce the same subject to a suitable protective order or agreement.

2. Petitioner objects to each and every one of these interrogatories to the extent that they are vague, ambiguous, overly broad and to the extent they seek information that is not relevant nor reasonably calculated to lead to the discovery of relevant evidence.

3. Petitioner objects to these interrogatories to the extent that they seek information or documents protected from discovery by the attorney-client privilege or

the work-product doctrine.

**INTERROGATORY NO. 1**

State by its common commercial name, each product manufactured, offered for sale, sold or distributed by Petitioner in connection with which the mark GRIZZLY has been used.

**Response to Interrogatory No. 1:**

- 1) Benches (including but not limited to - welding, molding, tool cabinet, cabinet benches, drawer cabinet benches, portable and stationery, various accessories, i.e. drawers, risers, shelves, tops.
- 2) Cabinets (including but not limited to - storage cabinets of various configurations and designs such as shelf, wardrobe, bin, tool, wall, lockers, sliding door, bi-fold door).
- 3) Carts (including but not limited to - box, cleaning, expanded metal, hand, tote-all, hopper, stock, ladder, 3 sided, utility).
- 4) Trucks (including but not limited to - a-frame, bar & rod, hand, rollover, box, instrument, drum dollies, pan & tray, platform, sheet & panel, shelf trucks, slat top, garment, corner, shoes, cradle, and accessories).
- 5) Desks (including but not limited to - shop & foreman desks of various configurations and styles.
- 6) Drum handling (including but not limited to - cradles, dollies, racks, lifters).

- 7) Racks (including but not limited to - die, rack-u-frame (trademark), vertical bar, drum stacking of various designs and styles).
- 8) Stands (including but not limited to - machine cabinet, tool).
- 9) Tables (including but not limited to - hydraulic lift, marking, utility, portable writing).
- 10) Portable assembly stools.
- 11) Work stations, portable and stationery, ergonomic, with various accessories.
- 12) Goods set forth in each of Petitioner's registrations. Goods set forth in the Notice Of Opposition.

**INTERROGATORY NO. 2**

State the date of first use by Petitioner of the mark GRIZZLY in connection with each product identified in response to Interrogatory No. 1.

**Response to Interrogatory No. 2:**

All products have been offered for sale under the Grizzly trade name and mark since the 1950's, with variations and modifications within the various lines.

Petitioner invites applicant to view the dates of first use set forth in each of its Registrations in the Notice Of Opposition. Petitioner incorporates those dates herein by reference.

**INTERROGATORY NO. 3**

Identify all products by common commercial names sold or distributed by Petitioner under the mark GRIZZLY prior to 1983.

**Response to Interrogatory No. 3:**

All products have been offered for sale under the Grizzly trade name and mark since the 1950's, with variations and modifications within the various lines. See answer to interrogatory No. 1.

**INTERROGATORY NO. 4**

State whether any market surveys or the like have been made or undertaken with respect to Petitioner's use of the mark GRIZZLY and/or whether there is a likelihood of confusion between Petitioner's mark GRIZZLY and Respondent's mark GRIZZLY, and for each such market survey or the like, identify:

- (a) the date each such survey was conducted;
- (b) the names of the persons most knowledgeable about such survey; and
- (c) all documents relating thereto.

**Response to Interrogatory No. 4:**

No market surveys have been made. Confusion is evident by having contact with people inquiring of products not made by us, and in some instances arguing that we have to provide them with the product.

**INTERROGATORY NO. 5**

State the circumstances under which Petitioner's officers, directors, or managing agents first became aware of Respondent's mark GRIZZLY, including:

- (a) the identity of those persons having such first hand knowledge;
- (b) the date on which such first knowledge was acquired;
- (c) the nature of such first knowledge; and
- (d) the identity of all documents which relate to Petitioner's knowledge of Respondent's trademark GRIZZLY.

**Response to Interrogatory No. 5:**

A - Anthony F. Mlakar

B - To the best of knowledge - 1997

C - Received copy of Grizzly Imports, Inc. catalog.

D - Catalogs, various publications and websites.

**INTERROGATORY NO. 6**

State the name, title, and address of those persons employed by or associated with Petitioner who were and are most knowledgeable about:

- (a) selling and marketing products in connection with which  
Petitioner's mark GRIZZLY is used, from the date of first use



to the present, and indicate the specific time periods during which each such person was most knowledgeable;

- (b) the promotion and advertising of products and services in connection with Petitioner's mark GRIZZLY is used, from the date of first use to the present, indicating specific time periods during which each such person was most knowledgeable; and
- (c) all facts which may relate to the issues in this proceeding, including but not limited to, all facts and issues pleaded in the Notice of Opposition.

**Response to Interrogatory No. 6:**

Anthony F. Mlakar, President, 1440 East 36<sup>th</sup> St. Cleveland, Ohio 44114

During the period 1954 to present in regard to all subsections of the interrogatory.

**INTERROGATORY NO 7**

Identify the channels of trade in which Petitioner's products have been, currently are, or will be sold, distributed, advertised or otherwise marketed or promoted in connection with the mark GRIZZLY.

**Response to Interrogatory No. 7:**

Channels of trade - through distributors, dealers and end users, through distribution of catalogs, brochures flyers, internet web site and by direct contact with these distributors, dealers and end users.

**INTERROGATORY NO. 8**

Identify and explain all methods of advertising and all types of media used to advertise and promote the products in connection with which Petitioner uses the mark GRIZZLY.

**Response to Interrogatory No. 8:**

Directories, display ads in publications, internet web site, catalogs, brochures, flyers, photos.

**INTERROGATORY NO. 9**

State the annual advertising and promotion costs of Petitioner attributable to products sold or distributed under Petitioner's mark GRIZZLY, for each year from the date of first use to the present.

**Response to Interrogatory No. 9:**

2000 - \$94,000

1999 - 115,000

1998 - 108,000

1997 - 97,000

1996 - 87,000

1995 - 92,000

1994 - 71,000

1993 - 64,000

1992 - 65,000

1991 - 82,000

Prior years not readily available

**INTERROGATORY NO. 10**

State the gross annual dollar sales of products sold or distributed under Petitioner's mark GRIZZLY, for each year from the date of first use to the present.

**Response to Interrogatory No. 10:**

This information is confidential and will be produced under terms of a suitable protective order.

**INTERROGATORY NO. 11**

Identify all third party uses and users of the mark GRIZZLY, of which Petitioner is aware, including the date and circumstances under which Petitioner first learned of each such use, the nature and extent of Petitioner's knowledge of each such third party use, and all documents referring or relating thereto.

**Response to Interrogatory No. 11:**

Third party users of the mark are unknown. However, companies having GRIZZLY as part of their names are known.

**INTERROGATORY NO. 12**

Identify by name and address each person or entity with whom Petitioner has communicated or had contact, either orally or in writing, wherein Petitioner has either asserted or received a notice of another's claim of rights relating to Petitioner's mark GRIZZLY, and with respect to each such communication or contact, fully explain all details including the current status or disposition of the claim, the date of such communication, the identity of the persons involved in such communication, the means of communication and the substance of such communications, and identify all documents which relate or refer thereto, including, but not limited to, all agreements.

**Response to Interrogatory No. 12:**

GRIZZLY MATERIAL HANDLING CO.  
San Antonio, Texas 1986

Robert M. Slife & Associates, Inc.

Also see documents which are being produced for inspection and copying.

**INTERROGATORY NO. 13**

Identify and describe each instance of confusion, likelihood of confusion, mistake or deception of which Petitioner is aware between Respondent and Petitioner,

their respective marks, or their respective products.

**Response to Interrogatory No. 13:**

GRAINGER (FINDMRO.COM) (Our customer) Request for quote - 5/17/01

MILLER EQUIPMENT (Our customer) Inquiry - 6/15/01

DURA AUTOMOTIVE - Inquiry re: GRIZZLY INDUSTRIAL - 7/17/01

MCJUNKIN/CAMBAR (Our customer) Inquiry re: GRIZZLY INDUSTRIAL

DANA CORP. (Our customer) Inquiry re: GRIZZLY INDUSTRIAL - 6/27/01

JAMES CULETTI-CONSTRUCTION; Looking for GRIZZLY INDUSTRIAL - "Saw us in Yellow Pages"

GRAINGER (Our customer) re: woodworking equipment

VEPP MANUFACTURING - Band saw - 5/10/01

SUPPLY DEPOT - Request for quote - 10/4/00

INDUSTRIAL APPRAISAL COMPANY - letter dated 8/16/2000

Documents which relate to these instances of actual confusion will be produced for inspection and copying.

**INTERROGATORY NO. 14**

Identify all persons or entities licensed or otherwise authorised by  
Petitioner to use Petitioner's mark GRIZZLY, and for each such person or entity,  
identify:

- (a) each product or service for which the mark has been or is  
currently being used pursuant to Petitioner's license or  
authorization;

- (b) the relevant time periods of each such use; and
- (c) the geographic area (by state) of each such use.

**Response to Interrogatory No. 14:**

None.

**INTERROGATORY NO. 15**

Specify all facts and identify all documents upon which Petitioner intends to rely in this proceeding.

**Response to Interrogatory No. 15:**

Objection. This interrogatory is vague and overbroad. Until discovery is reasonably complete, Petitioner will not know or be informed as to all the facts and documents upon which it will rely. Notwithstanding the objection, Petitioner intends to rely on the facts stated and alleged in the Petition For Cancellation, the facts stated in response to the instant interrogatories, Reg. No. 2,166,833 and its file history, the likelihood of confusion between Respondent's registered mark and Petitioner's registered marks, the similarity of the mark of the Respondent to Petitioner's registered marks, the similarity and identity of the goods of the Respondent to the goods of the Petitioner, the similarity of the channels of trade used by the Respondent and Petitioner, the similarity and identity of the purchasers of the goods of the Respondent and Petitioner, instances of actual confusion, Petitioner's advertising and promotion of

its marks and additional facts to be disclosed. Petitioner will rely upon its trademark registrations set forth in the pleadings. Further, notwithstanding the objection, documents identified in these interrogatories and documents in response to Respondent's requests are being produced and represent some but not all of the documents upon which Petitioner will rely.

**INTERROGATORY NO. 16**

Identify the persons most knowledgeable about Petitioner's statements in Paragraph 8 of the Petition for Cancellation, and specify all facts and identify all documents upon which such statements are based and/or upon which Petitioner intends to rely in support of such statements.

**Response to Interrogatory No. 16:**

Anthony F. Mlakar. Robert A. Mlakar. See response to interrogatory No. 15. Also see documents produced in response to Respondent's Requests.

**INTERROGATORY NO. 17**

Identify the persons most knowledgeable about Petitioner's statements in Paragraph 9 of the Petition For Cancellation, and specify all facts and identify all documents upon which such statements are based and/or upon which Petitioner intends to rely in support of such statements.

**Response to Interrogatory No. 17:**

Anthony F. Mlakar. Robert A. Mlakar. See response to Interrogatory No.15. Also see documents produced in response to Respondent's Requests.

**INTERROGATORY NO. 18**

Identify the persons most knowledgeable about Petitioner's statements in Paragraph 10 of the Petition For Cancellation, and specify all facts and identify all documents upon which such statements are based and/or upon which Petitioner intends to rely in support of such statements.

**Response to Interrogatory No. 18:**

Anthony F. Mlakar. Robert A. Mlakar. See response to Interrogatory No.15. Also see documents produced in response to Respondent's Requests.

**INTERROGATORY NO. 19**

Identify the persons most knowledgeable about Petitioner's statements in paragraph 11 of the Petition of Cancellation, and specify all facts and identify all documents upon which such statements are based and/or upon which petitioner intends to rely in support of such statements.

**Response to Interrogatory No. 19:**

Anthony F. Mlakar. Robert A. Mlakar. See response to Interrogatory No.15. Also see documents produced in response to Respondent's Requests.

**INTERROGATORY NO. 20**



Identify each and every witness, including fact, expert and other witnesses, upon whose testimony Petitioner intends to rely, refer to or offer into evidence in this matter, and with respect to each such person, identify:

- (a) whether that person will testify as an expert or fact witness;
- (b) the subject matter about which each such witness is expected to testify;
- (c) the identity of any documents or things upon which that witness will rely, refer to, or testify about describe the subject matter about which each such witness is expected to testify; and
- (d) if an expert witness, the expert's qualifications, the substance of the facts and opinions about which the expert is expected to testify, and summarize the grounds for the expert's opinions

**Response to Interrogatory No. 20:**

Anthony F. Mlakar as fact witness. Robert A. Mlakar as fact witness. See response to interrogatory number 15. See response to document requests. Expert witnesses have not yet been identified. Petitioner may supplement this response as discovery proceeds and as may be necessary.

**INTERROGATORY NO. 21**

Identify each person (other than Petitioner's counsel) who provided factual information, documents, or things responsive to these Interrogatories and Plaintiff's First Set of Requests for Production of Documents Nos. 1-22 and indicate the Interrogatories and Requests as to which each such person provided responsive information, documents, and things.

**Response to Interrogatory No. 21:**

Anthony F. Mlakar in regard to all interrogatories and document requests.

In regard to all interrogatories, Petitioner reserves the right to supplement all responses thereto as the cancellation proceeds.

DECLARATION

Pucel Enterprises, Inc. declare that the foregoing Petitioner's (Pucel) RESPONSES TO Respondent's (Grizzly) FIRST SET OF INTERROGATORIES and objections were prepared by counsel with my assistance, that I have used my knowledge and have been advised by others concerning the responses and based upon information and belief, the responses are true and correct. Pursuant to the provisions of 28 U.S.C. 1746, I declare under the penalty of perjury that the foregoing is true and correct.

Executed on:

PUCEL ENTERPRISES, INC.

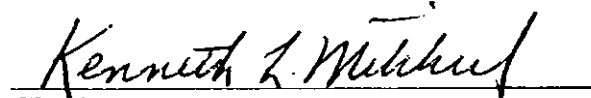
Date

10/1/01

By



As to objections,



Charles R. Rust  
Ohio State Bar No. 0001073  
Kenneth L. Mitchell  
Ohio State Bar No. 0031587  
Attorneys-in-Charge  
Woodling, Krost and Rust  
9213 Chillicothe Rd.

Kirtland, OH 44094  
(886) 241-4150

Attorneys for Petitioner

**CERTIFICATE OF SERVICE**

This is to certify that copies of the above **Petitioner's (Pucel)**  
**RESPONSE TO Respondent's FIRST SET OF INTERROGATORIES** were  
mailed by U.S. First Class Mail, postage prepaid, to Joseph F. Schmidt, Michael Best  
& Friedrich LLC, 401 North Michigan Ave., Suite 1700, Chicago, IL 60611, this  
10/2 day of 2001.

Kenneth L. Mitchell

805  
7.7

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE  
Before The Trademark Trial and Appeal Board

PUCEL ENTERPRISES, INC. )

Petitioner, )

v. )

GRIZZLY INDUSTRIAL, INC. )

Respondent. )

) Cancellation No. 32,024

) Registration No. 2,413,625

**PETITIONER'S (PUCEL ENTERPRISES, INC.) RESPONSE TO  
RESPONDENT'S FIRST SET OF INTERROGATORIES**

( )  
Petitioner, **Pucel Enterprises, Inc. (Pucel)**, in accordance with Rule 33  
of the Federal Rules of Civil Procedure and 37 CFR §2.120 responds to Respondents',  
**Grizzly Industrial, Inc. (Grizzly)**, first set of interrogatories as follows:

**PRELIMINARY STATEMENT**

Petitioner responds to these interrogatories, preserving:

A. All objections and/or questions as to competency, relevancy,  
materiality, privilege and admissibility as evidence for any purpose with regard to the  
answer or the subject matter thereof, in any subsequent proceeding, in or at the trial of,  
this or any other action;



B. The right to object to the use of any said answers or the subject matter thereof, in any subsequent proceeding in, or trial of, this or any other action;

C. The right to object on any ground at any time to a demand for further response to these or any other interrogatory; and

D. The right at any time to revise, correct, add to, or clarify any of the answers submitted herein.

#### General Objections

1. Certain of the information and identification of documents sought by Respondent, constitute confidential business information of **Pucel**. **Pucel** objects to the disclosure of such information or documents to Respondent on the ground that disclosure of such information to Respondent would damage **Pucel**. In respect to information objected to only on this basis, **Pucel** is willing to produce the same subject to a suitable protective order or agreement.

2. Petitioner objects to each and every one of these interrogatories to the extent that they are vague, ambiguous, overly broad and to the extent they seek information that is not relevant nor reasonably calculated to lead to the discovery of relevant evidence.

3. Petitioner objects to these interrogatories to the extent that they seek information or documents protected from discovery by the attorney-client privilege or

the work-product doctrine.

**INTERROGATORY NO. 1**

State by its common commercial name, each product manufactured, offered for sale, sold or distributed by Petitioner in connection with which the mark GRIZZLY has been used.

**Response to Interrogatory No. 1:**

- 1) Benches (including but not limited to - welding, molding, tool cabinet, cabinet benches, drawer cabinet benches, portable and stationery, various accessories, i.e. drawers, risers, shelves, tops.
- 2) Cabinets (including but not limited to - storage cabinets of various configurations and designs such as shelf, wardrobe, bin, tool, wall, lockers, sliding door, bi-fold door).
- 3) Carts (including but not limited to - box, cleaning, expanded metal, hand, tote-all, hopper, stock, ladder, 3 sided, utility).
- 4) Trucks (including but not limited to - a-frame, bar & rod, hand, rollover, box, instrument, drum dollies, pan & tray, platform, sheet & panel, shelf trucks, slat top, garment, corner, shoes, cradle, and accessories).
- 5) Desks (including but not limited to - shop & foreman desks of various configurations and styles.
- 6) Drum handling (including but not limited to - cradles, dollies, racks, lifters).



- 7) Racks (including but not limited to - die, rack-u-frame (trademark), vertical bar, drum stacking of various designs and styles).
- 8) Stands (including but not limited to - machine cabinet, tool).
- 9) Tables (including but not limited to - hydraulic lift, marking, utility, portable writing).
- 10) Portable assembly stools.
- 11) Work stations, portable and stationery, ergonomic, with various accessories.
- 12) Goods set forth in each of Petitioner's registrations. Goods set forth in the Notice Of Opposition.

**INTERROGATORY NO. 2**

State the date of first use by Petitioner of the mark GRIZZLY in connection with each product identified in response to Interrogatory No. 1.

**Response to Interrogatory No. 2:**

All products have been offered for sale under the Grizzly trade name and mark since the 1950's, with variations and modifications within the various lines. Petitioner invites applicant to view the dates of first use set forth in each of its Registrations in the Notice Of Opposition. Petitioner incorporates those dates herein by reference.

**INTERROGATORY NO. 3**

Identify all products by common commercial names sold or distributed by Petitioner under the mark GRIZZLY prior to 1983.

**Response to Interrogatory No. 3:**

All products have been offered for sale under the Grizzly trade name and mark since the 1950's, with variations and modifications within the various lines. See answer to interrogatory No. 1.

**INTERROGATORY NO. 4**

State whether any market surveys or the like have been made or undertaken with respect to Petitioner's use of the mark GRIZZLY and/or whether there is a likelihood of confusion between Petitioner's mark GRIZZLY and Respondent's mark GRIZZLY, and for each such market survey or the like, identify:

- (a) the date each such survey was conducted;
- (b) the names of the persons most knowledgeable about such survey; and
- (c) all documents relating thereto.

**Response to Interrogatory No. 4:**

No market surveys have been made. Confusion is evident by having contact with people inquiring of products not made by us, and in some instances

arguing that we have to provide them with the product.

**INTERROGATORY NO. 5**

State the circumstances under which Petitioner's officers, directors, or managing agents first became aware of Respondent's mark GRIZZLY, including:

- (a) the identity of those persons having such first hand knowledge;
- (b) the date on which such first knowledge was acquired;
- (c) the nature of such first knowledge; and
- (d) the identity of all documents which relate to Petitioner's knowledge of Respondent's trademark GRIZZLY.

**Response to Interrogatory No. 5:**

A - Anthony F. Mlakar

B - To the best of knowledge - 1997

C - Received copy of Grizzly Imports, Inc. catalog.

D - Catalogs, various publications and websites.

**INTERROGATORY NO. 6**

State the name, title, and address of those persons employed by or associated with Petitioner who were and are most knowledgeable about:

- (a) selling and marketing products in connection with which

- Petitioner's mark GRIZZLY is used, from the date of first use to the present, and indicate the specific time periods during which each such person was most knowledgeable;
- (b) the promotion and advertising of products and services in connection with Petitioner's mark GRIZZLY is used, from the date of first use to the present, indicating specific time periods during which each such person was most knowledgeable; and
- (c) all facts which may relate to the issues in this proceeding, including but not limited to, all facts and issues pleaded in the Notice of Opposition.

**Response to Interrogatory No. 6:**

Anthony F. Mlakar, President, 1440 East 36<sup>th</sup> St. Cleveland, Ohio 44114

During the period 1954 to present in regard to all subsections of the interrogatory.

**INTERROGATORY NO 7**

Identify the channels of trade in which Petitioner's products have been, currently are, or will be sold, distributed, advertised or otherwise marketed or promoted in connection with the mark GRIZZLY.

**Response to Interrogatory No. 7:**

Channels of trade - through distributors, dealers and end users, through distribution of catalogs, brochures flyers, internet web site and by direct contact with these distributors, dealers and end users.

**INTERROGATORY NO. 8**

Identify and explain all methods of advertising and all types of media used to advertise and promote the products in connection with which Petitioner uses the mark GRIZZLY.

**Response to Interrogatory No. 8:**

Directories, display ads in publications, internet web site, catalogs, brochures, flyers, photos.

**INTERROGATORY NO. 9**

State the annual advertising and promotion costs of Petitioner attributable to products sold or distributed under Petitioner's mark GRIZZLY, for each year from the date of first use to the present.

**Response to Interrogatory No. 9:**

2000 - \$94,000

1999 - 115,000

1998 - 108,000

1997 - 97,000

1996 - 87,000

1995 - 92,000

1994 - 71,000

1993 - 64,000

1992 - 65,000

1991 - 82,000

Prior years not readily available

**INTERROGATORY NO. 10**

State the gross annual dollar sales of products sold or distributed under Petitioner's mark GRIZZLY, for each year from the date of first use to the present.

**Response to Interrogatory No. 10:**

This information is confidential and will be produced under terms of a suitable protective order.

**INTERROGATORY NO. 11**

Identify all third party uses and users of the mark GRIZZLY, of which Petitioner is aware, including the date and circumstances under which Petitioner first learned of each such use, the nature and extent of Petitioner's knowledge of each such third party use, and all documents referring or relating thereto.

**Response to Interrogatory No. 11:**

Third party users of the mark are unknown. However, companies having GRIZZLY as part of their names are known.

**INTERROGATORY NO. 12**

Identify by name and address each person or entity with whom Petitioner has communicated or had contact, either orally or in writing, wherein Petitioner has either asserted or received a notice of another's claim of rights relating to Petitioner's mark GRIZZLY, and with respect to each such communication or contact, fully explain all details including the current status or disposition of the claim, the date of such communication, the identity of the persons involved in such communication, the means of communication and the substance of such communications, and identify all documents which relate or refer thereto, including, but not limited to, all agreements.

**Response to Interrogatory No. 12:**

GRIZZLY MATERIAL HANDLING CO.  
San Antonio, Texas 1986

Robert M. Slife & Associates, Inc.

Also see documents which are being produced for inspection and copying.

**INTERROGATORY NO. 13**

Identify and describe each instance of confusion, likelihood of confusion,

mistake or deception of which Petitioner is aware between Respondent and Petitioner, their respective marks, or their respective products.

**Response to Interrogatory No. 13:**

GRAINGER (FINDMRO.COM) (Our customer) Request for quote - 5/17/01  
MILLER EQUIPMENT (Our customer) Inquiry - 6/15/01  
DURA AUTOMOTIVE - Inquiry re: GRIZZLY INDUSTRIAL - 7/17/01  
MCJUNKIN/CAMBAR (Our customer) Inquiry re: GRIZZLY INDUSTRIAL  
DANA CORP. (Our customer) Inquiry re: GRIZZLY INDUSTRIAL - 6/27/01  
JAMES CULETTI-CONSTRUCTION; Looking for GRIZZLY INDUSTRIAL - "Saw us in Yellow Pages"  
GRAINGER (Our customer) re: woodworking equipment  
VEPP MANUFACTURING - Band saw - 5/10/01  
SUPPLY DEPOT - Request for quote - 10/4/00  
INDUSTRIAL APPRAISAL COMPANY - letter dated 8/16/2001

Documents which relate to these instances of actual confusion will be produced for inspection and copying.

**INTERROGATORY NO. 14**

Identify all persons or entities licensed or otherwise authorised by Petitioner to use Petitioner's mark GRIZZLY, and for each such person or entity, identify:

- (a) each product or service for which the mark has been or is currently being used pursuant to Petitioner's license or



authorization;

- (b) the relevant time periods of each such use; and
- (c) the geographic area (by state) of each such use.

**Response to Interrogatory No. 14:**

None

**INTERROGATORY NO. 15**

Specify all facts and identify all documents upon which Petitioner intends to rely in this proceeding.

**Response to Interrogatory No. 15:**

Objection. This interrogatory is vague and overbroad. Until discovery is reasonably complete, Petitioner will not know or be informed as to all the facts and documents upon which it will rely. Notwithstanding the objection, Petitioner intends to rely on the facts stated and alleged in the Petition For Cancellation, the facts stated in response to the instant interrogatories, Reg. No. 2,413,625 and its file history, the likelihood of confusion between the Respondent's registered mark and Petitioner's registered marks, the similarity of the mark of the Respondent to Petitioner's registered marks, the similarity and identity of the goods of the Respondent to the goods of the Petitioner, the similarity of the channels of trade used by the Respondent and Petitioner, the similarity and identity of the purchasers of the goods of the Respondent

and Petitioner, instances of actual confusion, Petitioner's advertising and promotion of its marks and additional facts to be discovered. Petitioner will rely upon its trademark registrations set forth in the pleadings. Further, notwithstanding the objection, documents identified in these interrogatories and documents in response to Respondent's requests are being produced and represent some but not all of the documents upon which Petitioner will rely.

**INTERROGATORY NO. 16**

Identify the persons most knowledgeable about Petitioner's statements in Paragraph 7 of the Notice of Opposition, and specify all facts and identify all documents upon which such statements are based and/or upon which Petitioner intends to rely in support of such statements.

**Response to Interrogatory No. 16:**

Anthony F. Mlakar. Robert A. Mlakar. See response to interrogatory No. 15. Also see documents produced in response to Respondent's Requests.

**INTERROGATORY NO. 17**

Identify the persons most knowledgeable about Petitioner's statements in Paragraph 9 of the Petition For Cancellation, and specify all facts and identify all documents upon which such statements are based and/or upon which Petitioner intends to rely in support of such statements.

**Response to Interrogatory No. 17:**

Anthony F. Mlakar. Robert A. Mlakar. See response to interrogatory No.

15. Also see documents produced in response to Respondent's Requests.

**INTERROGATORY NO. 18**

Identify the persons most knowledgeable about Petitioner's statements in Paragraph 10 of the Petition For Cancellation, and specify all facts and identify all documents upon which such statements are based and/or upon which Petitioner intends to rely in support of such statements.

**Response to Interrogatory No. 18:**

Anthony F. Mlakar. Robert A. Mlakar. See response to interrogatory No.

15. Also see documents produced in response to Respondent's Requests.

**INTERROGATORY NO. 19**

Identify the persons most knowledgeable about Petitioner's statements in paragraph 11 of the Petition of Cancellation, and specify all facts and identify all documents upon which such statements are based and/or upon which petitioner intends to rely in support of such statements.

**Response to Interrogatory No. 19:**

Anthony F. Mlakar. Robert A. Mlakar. See response to interrogatory No.

15. Also see

documents produced in response to Respondent's Requests.

**INTERROGATORY NO. 20**

Identify each and every witness, including fact, expert and other witnesses, upon whose testimony Petitioner intends to rely, refer to or offer into evidence in this matter, and with respect to each such person, identify:

- (a) whether that person will testify as an expert or fact witness;
- (b) the subject matter about which each such witness is expected to testify;
- (c) the identity of any documents or things upon which that witness will rely, refer to, or testify about describe the subject matter about which each such witness is expected to testify; and
- (d) if an expert witness, the expert's qualifications, the substance of the facts and opinions about which the expert is expected to testify, and summarize the grounds for the expert's opinions

**Response to Interrogatory No. 20:**

Anthony F. Mlakar as fact witness. Robert A. Mlakars fact witness. See response to interrogatory number 15. See response to document requests. Expert witnesses have not yet been identified. Petitioner may supplement this response as

discovery proceeds and as may be necessary.

**INTERROGATORY NO. 21**

Identify each person (other than Petitioner's counsel) who provided factual information, documents, or things responsive to these Interrogatories and Plaintiff's First Set of Requests for Production of Documents Nos. 1-22 and indicate the Interrogatories and Requests as to which each such person provided responsive information, documents, and things.

**Response to Interrogatory No. 21:**

Anthony F. Mlakar in regard to all interrogatories and document requests.

In regard to all interrogatories, Petitioner reserves the right to supplement all responses thereto as the Cancellation progresses.

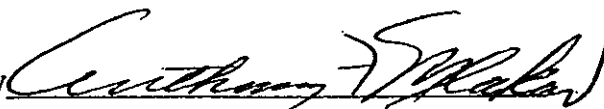
DECLARATION

Pucel Enterprises, Inc. declare that the foregoing Petitioner's (Pucel) RESPONSES TO Respondent's (Grizzly) FIRST SET OF INTERROGATORIES and objections were prepared by counsel with my assistance, that I have used my knowledge and have been advised by others concerning the responses and based upon information and belief, the responses are true and correct. Pursuant to the provisions of 28 U.S.C. 1746, I declare under the penalty of perjury that the foregoing is true and correct.


Executed on:

PUCEL ENTERPRISES, INC.

10/1/01  
Date

By 

As to objections,

  
Charles R. Rust  
Ohio State Bar No. 0001073  
Kenneth L. Mitchell  
Ohio State Bar No. 0031587  
Attorneys-in-Charge  
Woodling, Krost and Rust  
9213 Chillicothe Rd.

Kirtland, OH 44094  
(886) 241-4150

Attorneys for Petitioner

**CERTIFICATE OF SERVICE**

This is to certify that copies of the above **Petitioner's (Pucel)**  
**RESPONSE TO Respondent'S FIRST SET OF INTERROGATORIES** were  
mailed by U.S. First Class Mail, postage prepaid, to Joseph F. Schmidt, Michael Best  
& Friedrich LLC, 401 North Michigan Ave., Suite 1700, Chicago, IL 60611, this  
10/2 day of 2001.

Kenneth L. Mitchell



JFS

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE  
Before The Trademark Trial and Appeal Board

PUCEL ENTERPRISES, INC.	)	
	)	
	)	
Petitioner,	)	Cancellation No. 32,025
	)	Registration No. 2,312,226
	)	
v.	)	
	)	
GRIZZLY INDUSTRIAL, INC.	)	
	)	
	)	
Respondent.	)	

**PETITIONER'S (PUCEL ENTERPRISES, INC.) RESPONSE TO  
RESPONDENT'S FIRST SET OF INTERROGATORIES**

Petitioner, **Pucel Enterprises, Inc. (Pucel)**, in accordance with Rule 33 of the Federal Rules of Civil Procedure and 37 CFR §2.120 responds to Respondents', **Grizzly Industrial, Inc. (Grizzly)**, first set of interrogatories as follows:

**PRELIMINARY STATEMENT**

Petitioner responds to these interrogatories, preserving:

A. All objections and/or questions as to competency, relevancy, materiality, privilege and admissibility as evidence for any purpose with regard to the answer or the subject matter thereof, in any subsequent proceeding, in or at the trial of, this or any other action;



B. The right to object to the use of any said answers or the subject matter thereof, in any subsequent proceeding in, or trial of, this or any other action;

C. The right to object on any ground at any time to a demand for further response to these or any other interrogatory; and

D. The right at any time to revise, correct, add to, or clarify any of the answers submitted herein.

General Objections

1. Certain of the information and identification of documents sought by Respondent, constitute confidential business information of **Pucel**. **Pucel** objects to the disclosure of such information or documents to Respondent on the ground that disclosure of such information to Respondent would damage **Pucel**. In respect to information objected to only on this basis, **Pucel** is willing to produce the same subject to a suitable protective order or agreement.

2. Petitioner objects to each and every one of these interrogatories to the extent that they are vague, ambiguous, overly broad and to the extent they seek information that is not relevant nor reasonably calculated to lead to the discovery of relevant evidence.

3. Petitioner objects to these interrogatories to the extent that they seek information or documents protected from discovery by the attorney-client privilege or

the work-product doctrine.

**INTERROGATORY NO. 1**

State by its common commercial name, each product manufactured, offered for sale, sold or distributed by Petitioner in connection with which the mark GRIZZLY has been used.

**Response to Interrogatory No. 1:**

- 1) Benches (including but not limited to - welding, molding, tool cabinet, cabinet benches, drawer cabinet benches, portable and stationery, various accessories, i.e. drawers, risers, shelves, tops).
- 2) Cabinets (including but not limited to - storage cabinets of various configurations and designs such as shelf, wardrobe, bin, tool, wall, lockers, sliding door, bi-fold door).
- 3) Carts (including but not limited to - box, cleaning, expanded metal, hand, tote-all, hopper, stock, ladder, 3 sided, utility).
- 4) Trucks (including but not limited to - a-frame, bar & rod, hand, rollover, box, instrument, drum dollies, pan & tray, platform, sheet & panel, shelf trucks, slat top, garment, corner, shoes, cradle, and accessories).
- 5) Desks (including but not limited to - shop & foreman desks of various configurations and styles).
- 6) Drum handling (including but not limited to - cradles, dollies, racks, lifters).

- 7) Racks (including but not limited to - die, rack-u-frame (trademark), vertical bar, drum stacking of various designs and styles).
- 8) Stands (including but not limited to - machine cabinet, tool).
- 9) Tables (including but not limited to - hydraulic lift, marking, utility, portable writing).
- 10) Portable assembly stools.
- 11) Work stations, portable and stationery, ergonomic, with various accessories.
- 12) Goods set forth in each of Petitioner's registrations. Goods set forth in the Notice Of Opposition.

**INTERROGATORY NO. 2**

State the date of first use by Petitioner of the mark GRIZZLY in connection with each product identified in response to Interrogatory No. 1.

**Response to Interrogatory No. 2:**

All products have been offered for sale under the Grizzly trade name and mark since the 1950's, with variations and modifications within the various lines. Petitioner invites respondent to view the dates of first use set forth in each of its Registrations in the Petition For Cancellation. Petitioner incorporates those dates herein by reference.

**INTERROGATORY NO. 3**

Identify all products by common commercial names sold or distributed by Petitioner under the mark GRIZZLY prior to 1983.

**Response to Interrogatory No. 3:**

All products have been offered for sale under the GRIZZLY trade name and mark since the 1950's, with variations and modifications within the various lines. See answer to interrogatory No. 1.

**INTERROGATORY NO. 4**

State whether any market surveys or the like have been made or undertaken with respect to Petitioner's use of the mark GRIZZLY and/or whether there is a likelihood of confusion between Petitioner's mark GRIZZLY and Respondent's mark GRIZZLY, and for each such market survey or the like, identify:

- (a) the date each such survey was conducted;
- (b) the names of the persons most knowledgeable about such survey; and
- (c) all documents relating thereto.

**Response to Interrogatory No. 4:**

No market surveys have been made. Confusion is evident by having contact with people inquiring of products not made by us, and in some instances

arguing that we have to provide them with the product.

**INTERROGATORY NO. 5**

State the circumstances under which Petitioner's officers, directors, or managing agents first became aware of Respondent's mark GRIZZLY, including:

- (a) the identity of those persons having such first hand knowledge;
- (b) the date on which such first knowledge was acquired;
- (c) the nature of such first knowledge; and
- (d) the identity of all documents which relate to Petitioner's knowledge of Respondent's trademark GRIZZLY.

**Response to Interrogatory No. 5:**

A - Anthony F. Mlakar

B - To the best of knowledge - 1997

C - Received copy of GRIZZLY Imports, Inc. catalog.

D - Catalogs, various publications and websites.

**INTERROGATORY NO. 6**

State the name, title, and address of those persons employed by or associated with Petitioner who were and are most knowledgeable about:

- (a) selling and marketing products in connection with which

Petitioner's mark GRIZZLY is used, from the date of first use to the present, and indicate the specific time periods during which each such person was most knowledgeable;

- (b) the promotion and advertising of products and services in connection with Petitioner's mark GRIZZLY is used, from the date of first use to the present, indicating specific time periods during which each such person was most knowledgeable; and
- (c) all facts which may relate to the issues in this proceeding, including but not limited to, all facts and issues pleaded in the Notice of Opposition.

**Response to Interrogatory No. 6:**

Anthony F. Mlakar, President, 1440 East 36<sup>th</sup> St. Cleveland, Ohio 44114

During the period 1954 to present in regard to all subsections of the interrogatory.

**INTERROGATORY NO 7**

Identify the channels of trade in which Petitioner's products have been, currently are, or will be sold, distributed, advertised or otherwise marketed or promoted in connection with the mark GRIZZLY.

**Response to Interrogatory No. 7:**

Channels of trade - through distributors, dealers and end users, through distribution of catalogs, brochures flyers, internet web site and by direct contact with these distributors, dealers and end users.

**INTERROGATORY NO. 8**

Identify and explain all methods of advertising and all types of media used to advertise and promote the products in connection with thich Petitioner uses the mark GRIZZLY.

**Response to Interrogatory No. 8:**

Directories, display ads in publications, internet web site, catalogs, brochures, flyers, photos.

**INTERROGATORY NO. 9**

State the annual advertising and promotion costs of Petitioner attributable to products sold or distributed under Petitioner's mark GRIZZLY, for each year from the date of first use to the present.

**Response to Interrogatory No. 9:**

2000 - \$94,000

1999 - 115,000

1998 - 108,000



1997 - 97,000

1996 - 87,000

1995 - 92,000

1994 - 71,000

1993 - 64,000

1992 - 65,000

1991 - 82,000

Prior years not readily available

**INTERROGATORY NO. 10**

State the gross annual dollar sales of products sold or distributed under Petitioner's mark GRIZZLY, for each year from the date of first use to the present.

**Response to Interrogatory No. 10:**

This information is confidential and will be produced under terms of a suitable protective order.

**INTERROGATORY NO. 11**

Identify all third party uses and users of the mark GRIZZLY, of which Petitioner is aware, including the date and circumstances under which Petitioner first learned of each such use, the nature and extent of Petitioner's knowledge of each such third party use, and all documents referring or relating thereto.

**Response to Interrogatory No. 11:**

Third party users of the mark are unknown. However, companies having GRIZZLY as part of their names are known.

**INTERROGATORY NO. 12**

Identify by name and address each person or entity with whom Petitioner has communicated or had contact, either orally or in writing, wherein Petitioner has either asserted or received a notice of another's claim of rights relating to Petitioner's mark GRIZZLY, and with respect to each such communication or contact, fully explain all details including the current status or disposition of the claim, the date of such communication, the identity of the persons involved in such communication, the means of communication and the substance of such communications, and identify all documents which relate or refer thereto, including, but not limited to, all agreements.

**Response to Interrogatory No. 12:**

GRIZZLY MATERIAL HANDLING CO.  
San Antonio, Texas 1986

Robert M. Slife & Associates, Inc.

Also see documents which are being produced for inspection and copying.

**INTERROGATORY NO. 13**

Identify and describe each instance of confusion, likelihood of confusion, mistake or deception of which Petitioner is aware between Respondent and Petitioner, their respective marks, or their respective products.

**Response to Interrogatory No. 13:**

GRAINGER (FINDMRO.COM) (Our customer) Request for quote - 5/17/01  
MILLER EQUIPMENT (Our customer) Inquiry - 6/15/01  
DURA AUTOMOTIVE - Inquiry re: GRIZZLY INDUSTRIAL - 7/17/01  
MCJUNKIN/CAMBAR (Our customer) Inquiry re: GRIZZLY INDUSTRIAL  
DANA CORP. (Our customer) Inquiry re: GRIZZLY INDUSTRIAL - 6/27/01  
JAMES CULETTI-CONSTRUCTION; Looking for GRIZZLY INDUSTRIAL - "Saw us in Yellow Pages"  
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VEPP MANUFACTURING - Band saw - 5/10/01  
SUPPLY DEPOT - Request for quote - 10/4/00  
INDUSTRIAL APPRAISAL COMPANY - letter dated 8/16/2000

Documents which relate to these instances of actual confusion will be produced for inspection and copying.

**INTERROGATORY NO. 14**

Identify all persons or entities licensed or otherwise authorised by Petitioner to use Petitioner's mark GRIZZLY, and for each such person or entity, identify:

- (a) each product or service for which the mark has been or is currently being used pursuant to Petitioner's license or authorization;
- (b) the relevant time periods of each such use; and
- (c) the geographic area (by state) of each such use.

**Response to Interrogatory No. 14:**

None

**INTERROGATORY NO. 15**

Specify all facts and identify all documents upon which Petitioner intends to rely in this proceeding.

**Response to Interrogatory No. 15:**

Objection. This interrogatory is vague and overbroad. Until discovery is reasonably complete, Petitioner will not know or be informed as to all the facts and documents upon which it will rely. Notwithstanding the objection, Petitioner intends to rely on the facts stated and alleged in the Petition For Cancellation, the facts stated in response to the instant interrogatories, Reg. No. 2,312,226 and its file history, the likelihood of confusion between the registered mark of respondent and Petitioner's registered marks, the similarity of the mark of the Respondent to Petitioner's registered marks, the similarity and identity of the goods of the Respondent to the

goods of the Petitioner, the similarity of the channels of trade used by the Respondent and Petitioner, the similarity and identity of the purchasers of the goods of the Respondent and Petitioner, instances of actual confusion, Petitioner's advertising and promotion of its marks and additional facts to be discovered. Petitioner will rely upon its trademark registrations set forth in the pleadings. Further, notwithstanding the objection, documents identified in these interrogatories and documents in response to Respondent's requests are being produced and represent some but not all of the documents upon which Petitioner will rely.

**INTERROGATORY NO. 16**

Identify the persons most knowledgeable about Petitioner's statements in Paragraph 8 of the Petition for Cancellation, and specify all facts and identify all documents upon which such statements are based and/or upon which Petitioner intends to rely in support of such statements.

**Response to Interrogatory No. 16:**

Anthony F. Mlakar. Robert A. Mlakar. See response to interrogatory No. 15. Also see documents produced in response to Respondent's Requests.

**INTERROGATORY NO. 17**

Identify the persons most knowledgeable about Petitioner's statements in Paragraph 9 of the Petition For Cancellation, and specify all facts and identify all documents upon which such statements are based and/or upon which Petitioner intends to rely in support of such statements.

**Response to Interrogatory No. 17:**

Anthony F. Mlakar. Robert A. Mlakar. See response to Interrogatory No.15. Also see documents produced in response to Respondent's Requests.

**INTERROGATORY NO. 18**

Identify the persons most knowledgeable about Petitioner's statements in Paragraph 10 of the Petition For Cancellation, and specify all facts and identify all documents upon which such statements are based and/or upon which Petitioner intends to rely in support of such statements.

**Response to Interrogatory No. 18:**

Anthony F. Mlakar. Robert A. Mlakar. See response to Interrogatory No.15. Also see documents produced in response to Respondent's Requests.

**INTERROGATORY NO. 19**

Identify the persons most knowledgeable about Petitioner's statements in paragraph 11 of the Petition of Cancellation, and specify all facts and identify all documents upon which such statements are based and/or upon which petitioner intends

to rely in support of such statements.

**Response to Interrogatory No. 19:**

Anthony F. Mlakar. Robert A. Mlakar. See response to Interrogatory No.15. Also see documents produced in response to Respondent's Requests.

**INTERROGATORY NO. 20**

Identify each and every witness, including fact, expert and other witnesses, upon whose testimony Petitioner intends to rely, refer to or offer into evidence in this matter, and with respect to each such person, identify:

- (a) whether that person will testify as an expert or fact witness;
- (b) the subject matter about which each such witness is expected to testify;
- (c) the identity of any documents or things upon which that witness will rely, refer to, or testify about describe the subject matter about which each such witness is expected to testify;  
and
- (d) if an expert witness, the expert's qualifications, the substance of the facts and opinions about which the expert is expected to testify, and summarize the grounds for the expert's opinions

**Response to Interrogatory No. 20:**

Anthony F. Mlakar as fact witness. Robert A. Mlakar as fact witness. See response to interrogatory number 15. See response to document requests. Expert witnesses have not yet been identified. Petitioner may supplement this response as discovery proceeds and as may be necessary.

**INTERROGATORY NO. 21**

Identify each person (other than Petitioner's counsel) who provided factual information, documents, or things responsive to these Interrogatories and Plaintiff's First Set of Requests for Production of Documents Nos. 1-22 and indicate the Interrogatories and Requests as to which each such person provided responsive information, documents, and things.

**Response to Interrogatory No. 21:**

Anthony F. Mlakar in regard to all interrogatories and document requests. In regard to all interrogatories, Petitioner reserves the right to supplement all responses thereto as the cancellation proceeds.



DECLARATION

Pucel Enterprises, Inc. declare that the foregoing Petitioner's (Pucel) RESPONSES TO Respondent's (Grizzly) FIRST SET OF INTERROGATORIES and objections were prepared by counsel with my assistance, that I have used my knowledge and have been advised by others concerning the responses and based upon information and belief, the responses are true and correct. Pursuant to the provisions of 28 U.S.C. 1746, I declare under the penalty of perjury that the foregoing is true and correct.

Executed on:

PUCEL ENTERPRISES, INC.

10/1/01  
Date

By Anthony J. Mahan

As to objections,

Kenneth L. Mitchell  
Charles R. Rust  
Ohio State Bar No. 0001073  
Kenneth L. Mitchell  
Ohio State Bar No. 0031587  
Attorneys-in-Charge  
Woodling, Krost and Rust  
9213 Chillicothe Rd.

Kirtland, OH 44094  
(886) 241-4150

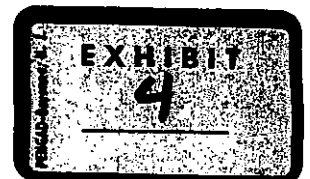
Attorneys for Petitioner

**CERTIFICATE OF SERVICE**

This is to certify that copies of the above **Petitioner's (Pucel)**  
**RESPONSE TO Respondent's FIRST SET OF INTERROGATORIES** were  
mailed by U.S. First Class Mail, postage prepaid, to Joseph F. Schmidt, Michael Best  
& Friedrich LLC, 401 North Michigan Ave., Suite 1700, Chicago, IL 60611, this  
10/2 day of 2001.

Kenneth F. Mitchell

# Opposition No. 123,506



B. The right to object to the use of any said answers or the subject matter thereof, in any subsequent proceeding in, or trial of, this or any other action;

C. The right to object on any ground at any time to a demand for further response to these or any other interrogatory; and

D. The right at any time to revise, correct, add to, or clarify any of the answers submitted herein.

#### General Objections

1. Certain of the information and identification of documents sought by Applicant, constitute confidential business information of **Pucel**. **Pucel** objects to the disclosure of such information or documents to Applicant on the ground that disclosure of such information to Applicant would damage **Pucel**. In respect to information objected to only on this basis, **Pucel** is willing to produce the same subject to a suitable protective order or agreement.

2. Opposer objects to each and every one of these interrogatories to the extent that they are vague, ambiguous, overly broad and to the extent they seek information that is not relevant nor reasonably calculated to lead to the discovery of relevant evidence.

3. Opposer objects to these interrogatories to the extent that they seek information or documents protected from discovery by the attorney-client privilege or

the work-product doctrine.

**INTERROGATORY NO. 1**

State by its common commercial name, each product manufactured, offered for sale, sold or distributed by Opposer in connection with which the mark GRIZZLY has been used.

**Response to Interrogatory No. 1:**

- 1) Benches (including but not limited to - welding, molding, tool cabinet, cabinet benches, drawer cabinet benches, portable and stationary, various accessories, i.e. drawers, risers, shelves, tops.
- 2) Cabinets (including but not limited to - storage cabinets of various configurations and designs such as shelf, wardrobe, bin, tool, wall, lockers, sliding door, bi-fold door).
- 3) Carts (including but not limited to - box, cleaning, expanded metal, hand, tote-all, hopper, stock, ladder, 3 sided, utility).
- 4) Trucks (including but not limited to - a-frame, bar & rod, hand, rollover, box, instrument, drum dollies, pan & tray, platform, sheet & panel, shelf trucks, slat top, garment, corner, shoes, cradle, and accessories).
- 5) Desks (including but not limited to - shop & foreman desks of various configurations and styles.
- 6) Drum handling (including but not limited to - cradles, dollies, racks, lifters).

- 7) Racks (including but not limited to - die, rack-u-frame (trademark), vertical bar, drum stacking of various designs and styles).
- 8) Stands (including but not limited to - machine cabinet, tool).
- 9) Tables (including but not limited to - hydraulic lift, marking, utility, portable writing).
- 10) Portable assembly stools.
- 11) Work stations, portable and stationary, ergonomic, with various accessories.
- 12) Goods set forth in each of Opposer's registrations. Goods set forth in the Notice Of Opposition.

**INTERROGATORY NO. 2**

State the date of first use by Opposer of the mark GRIZZLY in connection with each product identified in response to Interrogatory No. 1.

**Response to Interrogatory No. 2:**

All products have been offered for sale under the Grizzly trade name and mark since the 1950's, with variations and modifications within the various lines.

Opposer invites applicant to view the dates of first use set forth in each of its Registrations in the Notice Of Opposition. Opposer incorporates those dates herein by reference.

### **INTERROGATORY NO. 3**

Identify all products by common commercial names sold or distributed by Opposer under the mark GRIZZLY prior to 1983.

#### **Response to Interrogatory No. 3:**

All products have been offered for sale under the Grizzly trade name and mark since the 1950's, with variations and modifications within the various lines. See response to Interrogatory No. 1.

### **INTERROGATORY NO. 4**

State whether any market surveys or the like have been made or undertaken with respect to opposer's use of the mark GRIZZLY and/or whether there is a likelihood of confusion between Opposer's mark GRIZZLY and applicant's mark GRIZZLY, and for each such market survey or the like, identify:

- (a) the date each such survey was conducted;
- (b) the names of the persons most knowledgeable about such survey; and
- (c) all documents relating thereto.

#### **Response to Interrogatory No. 4:**

No market surveys have been made. Confusion is evident by having contact with people inquiring of products not made by us, and in some instances arguing that we



have to provide them with the product.

**INTERROGATORY NO. 5**

State the circumstances under which Opposer's officers, directors, or managing agents first became aware of applicant's mark GRIZZLY, including:

- (a) the identity of those persons having such first hand knowledge;
- (b) the date on which such first knowledge was acquired;
- (c) the nature of such first knowledge; and
- (d) the identity of all documents which relate to Opposer's knowledge of applicant's trademark GRIZZLY.

**Response to Interrogatory No. 5:**

A - Anthony F. Mlakar

B - To the best of my knowledge - 1997

C - Received copy of Grizzly Imports, Inc. catalog.

D - Catalogs, various publications and websites

**INTERROGATORY NO. 6**

State the name, title, and address of those persons employed by or associated with Opposer who were and are most knowledgeable about:

- (a) selling and marketing products in connection with which

Opposer's mark GRIZZLY is used, from the date of first use to the present, and indicate the specific time periods during which each such person was most knowledgeable;

- (b) the promotion and advertising of products and services in connection with Opposer's mark GRIZZLY is used, from the date of first use to the present, indicating specific time periods during which each such person was most knowledgeable; and
- (c) all facts which may relate to the issues in this proceeding, including but not limited to, all facts and issues pleaded in the Notice of Opposition.

**Response to Interrogatory No. 6:**

Anthony F. Mlakar, President, 1440 East 36<sup>th</sup> St. Cleveland, Ohio 44114

During the period 1954 to present in regard to all subsections of the interrogatory.

**INTERROGATORY NO 7**

Identify the channels of trade in which Opposer's products have been, currently are, or will be sold, distributed, advertised or otherwise marketed or promoted in connection with the mark GRIZZLY.

**Response to Interrogatory No. 7:**

Channels of trade - through distributors, dealers and end users, through distribution of catalogs, brochures flyers, internet web site and by direct contact with these distributors, dealers and end users.

**INTERROGATORY NO. 8**

Identify and explain all methods of advertising and all types of media used to advertise and promote the products in connection with which Opposer uses the mark GRIZZLY.

**Response to Interrogatory No. 8:**

Directories, display ads in publications, internet web site, catalogs, brochures, flyers, photos.

**INTERROGATORY NO. 9**

State the annual advertising and promotion costs of Opposer attributable to products sold or distributed under Opposer's mark GRIZZLY, for each year from the date of first use to the present.

**Response to Interrogatory No. 9:**

2000 - \$94,000

1999 - 115,000

1998 - 108,000

1997 - 97,000

1996 - 87,000

1995 - 92,000

1994 - 71,000

1993 - 64,000

1992 - 65,000

1991 - 82,000

Prior years not readily available

**INTERROGATORY NO. 10**

State the gross annual dollar sales of products sold or distributed under Opposer's mark GRIZZLY, for each year from the date of first use to the present.

**Response to Interrogatory No. 10:**

This information is confidential and will be produced under terms of a suitable protective order.

**INTERROGATORY NO. 11**

Identify all third party uses and users of the mark GRIZZLY, of which Opposer is aware, including the date and circumstances under which Opposer first learned of each such use, the nature and extent of Opposer's knowledge of each such third party use, and all documents referring or relating thereto.

**Response to Interrogatory No. 11:**

Third party users of the mark are unknown. However, companies having GRIZZLY as part of their names are known.

**INTERROGATORY NO. 12**

Identify by name and address each person or entity with whom Opposer has communicated or had contact, either orally or in writing, wherein Opposer has either asserted or received a notice of another's claim of rights relating to Opposer's mark GRIZZLY, and with respect to each such communication or contact, fully explain all details including the current status or disposition of the claim, the date of such communication, the identity of the persons involved in such communication, the means of communication and the substance of such communications, and identify all documents which relate or refer thereto, including, but not limited to, all agreements.

**Response to Interrogatory No. 12:**

GRIZZLY MATERIAL HANDLING CO.  
San Antonio, Texas 1986

Robert M. Slife & Associates, Inc.

Also see documents which are being produced for inspection and copying

**INTERROGATORY NO. 13**

Identify and describe each instance of confusion, likelihood of confusion, mistake or deception of which Opposer is aware between applicant and Opposer, their

respective marks, or their respective products.

**Response to Interrogatory No. 13:**

GRAINGER (FINDMRO.COM) (Our customer) Request for quote - 5/17/01

MILLER EQUIPMENT (Our customer) Inquiry - 6/15/01

DURA AUTOMOTIVE - Inquiry re: GRIZZLY INDUSTRIAL - 7/17/01

MCJUNKIN/CAMBAR (Our customer) Inquiry re: GRIZZLY INDUSTRIAL

DANA CORP. (Our customer) Inquiry re: GRIZZLY INDUSTRIAL - 6/27/01

JAMES CULETTI-CONSTRUCTION; Looking for GRIZZLY INDUSTRIAL - "Saw us in Yellow Pages"

GRAINGER (Our customer) re: woodworking equipment

VEPP MANUFACTURING - Band saw - 5/10/01

SUPPLY DEPOT - Request for quote - 10/4/00

INDUSTRIAL APPRAISAL COMPANY letter dated 8/16/2000

Documents which relate to these instances of actual confusion will be produced for inspection and copying.

**INTERROGATORY NO. 14**

Identify all persons or entities licensed or otherwise authorised by Opposer to use Opposer's mark GRIZZLY, and for each such person or entity, identify:

- (a) each product or service for which the mark has been or is currently being used pursuant to Opposer's license or authorization;

- (b) the relevant time periods of each such use; and
- (c) the geographic area (by state) of each such use.

**Response to Interrogatory No. 14:**

None.

**INTERROGATORY NO. 15**

Specify all facts and identify all documents upon which Opposer intends to rely in this proceeding.

**Response to Interrogatory No. 15:**

Objection. This interrogatory is vague and overbroad. Until discovery is reasonably complete, Opposer will not know or be informed as to all the facts and documents upon which it will rely. Notwithstanding the objection, Opposer intends to rely on the facts stated and alleged in the Notice Of Opposition and Amended Notice Of Opposition, the facts stated in response to the instant interrogatories, applicant's application to register GRIZZLY.COM together with its file history, the likelihood of confusion between the mark of applicant and the registered marks of the Opposer, the similarity of the mark of the Applicant to Opposer's registered marks, the similarity and identity of the goods of the Applicant to the goods of the Opposer, the similarity of the channels of trade used by the Applicant and Opposer, the similarity and identity of the purchasers of the goods of the Applicant and Opposer, the Opposer's advertisement

and promotion of the marks, instances of actual confusion, and additional facts to be discovered. Opposer will rely upon its trademarks registrations set forth in the pleadings. Further, notwithstanding the objection, documents identified in these interrogatories and documents in response to Applicant's requests are being produced and represent some but not all of the documents upon which Opposer will rely.

**INTERROGATORY NO. 16**

Identify the persons most knowledgeable about Opposer's statements in Paragraph 7 of the Notice of Opposition, and specify all facts and identify all documents upon which such statements are based and/or upon which Opposer intends to rely in support of such statements.

**Response to Interrogatory No. 16:**

Anthony F. Mlakar. Robert A. Mlakar. See responses to interrogatories 13 and 15.

**INTERROGATORY NO. 17**

Identify the persons most knowledgeable about Opposer's statements in Paragraph 8 of the Notice of Opposition, and specify all facts and identify all documents upon which such statements are based and/or upon which Opposer intends to rely in support of such statements.

**Response to Interrogatory No. 17:**



Anthony F. Mlakar. Robert A. Mlakar. See response to Interrogatory No.

15.

**INTERROGATORY NO. 18**

Identify the persons most knowledgeable about Opposer's statements in Paragraph 9 of the Notice of Opposition, and specify all facts and identify all documents upon which such statements are based and/or upon which Opposer intends to rely in support of such statements.

**Response to Interrogatory No. 18:**

Anthony F. Mlakar. Robert A. Mlakar. See response to Interrogatory No.15.

**INTERROGATORY NO. 19**

Identify each and every witness, including fact, expert and other witnesses, upon whose testimony Opposer intends to rely, refer to or offer into evidence in this matter, and with respect to each such person, identify:

- (a) whether that person will testify as an expert or fact witness;
- (b) the subject matter about which each such witness is expected to testify;
- (c) the identity of any documents or things upon which that witness will rely, refer to, or testify about describe the subject

matter about which each such witness is expected to testify;  
and

- (d) if an expert witness, the expert's qualifications, the substance of the facts and opinions about which the expert is expected to testify, and summarize the grounds for the expert's opinions

**Response to Interrogatory No. 19:**

Anthony F. Mlakar as fact witness. Robert A. Mlakar as fact witness. See response to interrogatory number 15. See response to document requests. Expert witnesses have not yet been identified. Opposer may supplement this response as discovery proceeds and as may be necessary.

**INTERROGATORY NO. 20**

Identify each person (other than Opposer's counsel) who provided factual information, documents, or things responsive to these Interrogatories and Plaintiff's First Set of Requests for Production of Documents Nos. 1-22 and indicate the Interrogatories and Requests as to which each such person provided responsive information, documents, and things.

**Response to Interrogatory No. 20:**

Anthony F. Mlakar in regard to all interrogatories and document requests.

In regard to all interrogatories, Opposer reserves the right to supplement all responses thereto as the Opposition progresses.

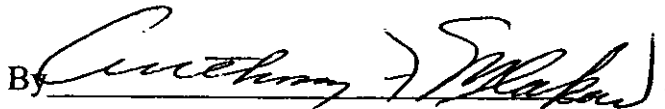
DECLARATION

Pucel Enterprises, Inc. declare that the foregoing OPPOSER'S (Pucel) RESPONSES TO APPLICANT'S (Grizzly) FIRST SET OF INTERROGATORIES and objections were prepared by counsel with my assistance, that I have used my knowledge and have been advised by others concerning the responses and based upon information and belief, the responses are true and correct. Pursuant to the provisions of 28 U.S.C. 1746, I declare under the penalty of perjury that the foregoing is true and correct.

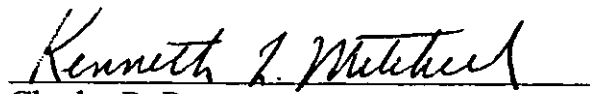
Executed on:

PUCEL ENTERPRISES, INC.

10/1/01  
Date

By 

As to objections,

  
Charles R. Rust  
Ohio State Bar No. 0001073  
Kenneth L. Mitchell  
Ohio State Bar No. 0031587  
Attorneys-in-Charge  
Woodling, Krost and Rust  
9213 Chillicothe Rd.

Kirtland, OH 44094  
(886) 241-4150

Attorneys for Opposer

**CERTIFICATE OF SERVICE**

This is to certify that copies of the above **OPPOSER'S (Pucel)**  
**RESPONSE TO APPLICANT'S FIRST SET OF INTERROGATORIES** were  
mailed by U.S. First Class Mail, postage prepaid, to Joseph F. Schmidt, Michael Best  
& Friedrich LLC, 401 North Michigan Ave., Suite 1700, Chicago, IL 60611, this  
10/2 day of 2001.

Kenneth L. Mitchell

JFS  
6/27/02  
28

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE  
Before The Trademark Trial and Appeal Board

PUCEL ENTERPRISES, INC. )

Opposer, )

v. )

GRIZZLY INDUSTRIAL, INC. )

Applicant. )

) Opposition No. 123,506;  
) Cancellation Nos. 31,984; 32,024; and  
) 32,025.  
)  
)  
)  
)

**OPPOSER'S AND PETITIONER'S SUPPLEMENTAL (PUCEL  
ENTERPRISES, INC.'S) RESPONSE TO APPLICANT'S FIRST SET OF  
INTERROGATORIES**

Opposer and Petitioner, **Pucel Enterprises, Inc. (Pucel)**, in accordance with Rule 33 of the Federal Rules of Civil Procedure and 37 CFR §2.120 supplements its response to Applicant's/Respondent's, **Grizzly Industrial, Inc. (Grizzly)**, first set of interrogatories as follows:

**PRELIMINARY STATEMENT**

Opposer responds to these interrogatories, preserving:

A. All objections and/or questions as to competency, relevancy, materiality, privilege and admissibility as evidence for any purpose with regard to the answer or the subject matter thereof, in any subsequent proceeding, in or at the trial of,



this or any other action;

B. The right to object to the use of any said answers or the subject matter thereof, in any subsequent proceeding in, or trial of, this or any other action;

C. The right to object on any ground at any time to a demand for further response to these or any other interrogatory; and

D. The right at any time to revise, correct, add to, or clarify any of the answers submitted herein.

#### General Objections

1. Opposer objects to each and every one of these interrogatories to the extent that they are vague, ambiguous, overly broad and to the extent they seek information that is not relevant nor reasonably calculated to lead to the discovery of relevant evidence.

2. Opposer objects to these interrogatories to the extent that they seek information or documents protected from discovery by the attorney-client privilege or the work-product doctrine.

#### INTERROGATORY NO. 19

Identify each and every witness, including fact, expert and other witnesses, upon whose testimony Opposer intends to rely, refer to or offer into evidence in this matter, and with respect to each such person, identify:



- (a) whether that person will testify as an expert or fact witness;
- (b) the subject matter about which each such witness is expected to testify;
- (c) the identity of any documents or things upon which that witness will rely, refer to, or testify about describe the subject matter about which each such witness is expected to testify; and
- (d) if an expert witness, the expert's qualifications, the substance of the facts and opinions about which the expert is expected to testify, and summarize the grounds for the expert's opinions

**Response to Interrogatory No. 19:**

Anthony F. Mlakar as fact witness. Robert A. Mlakar as fact witness. See response to interrogatory number 15. See response to document requests. Expert witnesses have not yet been identified.

Jeanette Papp of Papp Straub Associates, 4577 Taylor Lane, Cleveland, Ohio 44128 will testify on the issue of actual confusion.

Opposer may supplement this response as discovery proceeds and as may be necessary.

**DECLARATION**

Pucel Enterprises, Inc. declare that the foregoing OPPOSER'S AND PETITIONER'S (PUCEL'S) RESPONSES TO APPLICANT'S/RESPONDENT'S FIRST SET OF INTERROGATORIES and objections were prepared by counsel with my assistance, that I have used my knowledge and have been advised by others concerning the responses and based upon information and belief, the responses are true and correct. Pursuant to the provisions of 28 U.S.C. 1746, I declare under the penalty of perjury that the foregoing is true and correct.

Executed on:

PUCEL ENTERPRISES, INC.

June 27, 2002  
Date

By Anthony J. Rust

As to objections,

Kenneth L. Mitchell

Charles R. Rust  
Ohio State Bar No. 0001073  
Kenneth L. Mitchell  
Ohio State Bar No. 0031587  
Attorneys-in-Charge  
Woodling, Krost and Rust  
9213 Chillicothe Rd.  
Kirtland, OH 44094  
(886) 241-4150

Attorneys for Opposer/Petitioner

**CERTIFICATE OF SERVICE**

This is to certify that copies of the above **OPPOSER'S AND  
PETITIONER'S SUPPLEMENTAL RESPONSE TO  
APPLICANT'S/RESPONDENT'S FIRST SET OF INTERROGATORIES** were  
mailed by U.S. First Class Mail, postage prepaid, to Joseph F. Schmidt, Michael Best  
& Friedrich LLC, 401 North Michigan Ave., Suite 1700, Chicago, IL 60611, this  
27<sup>th</sup> day of June 2002.

Kenneth L. Mitchell

85  
23

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE  
Before The Trademark Trial and Appeal Board

PUCEL ENTERPRISES INC. )

Petitioner, )

v. )

GRIZZLY INDUSTRIAL INC. )

Respondent. )

CANCELLATION NO. 31,984  
Reg. No. 2,166,833

( )  
**PETITIONER'S (PUCEL ENTERPRISES INC.) RESPONSES TO  
RESPONDENT'S FIRST REQUEST FOR PRODUCTION**

**Pucel Enterprises, Inc. (Pucel) responds to Respondent's Grizzly  
Industrial, Inc. (Grizzly) first requests for production of documents and things as  
follows.**

**General Objections**

1. Certain of the information and identification of documents sought by  
Respondent, constitute confidential business information of Pucel. Pucel objects to  
the disclosure of such information or documents to Respondent on the ground that



disclosure of such information to Respondent would damage Pucel. In respect to information objected to only on this basis, Pucel is willing to produce the same subject to a suitable protective order or agreement.

2. Petitioner objects to each and every one of these requests to the extent that they are vague, ambiguous, overly broad and to the extent they seek information that is not relevant nor reasonably calculated to lead to the discovery of relevant evidence.

3. Petitioner objects to these requests to the extent that they seek information or documents protected from discovery by the attorney-client privilege or the work-product doctrine.

4. Petitioner objects to the requests in that they fail to specify a reasonable time, place and manner of making the inspection.

Subject to the above referred to objections and subject to the conditions set forth in responses to the specific requests, Petitioner will produce documents responsive to these requests at Pucel Enterprises, Inc., 1440 E. 36<sup>th</sup> Street, Cleveland, OH 44114 at a time and date as may be agreed upon between counsel.

## **REQUEST FOR PRODUCTION NO. 1**

A sample copy of every product, label, wrapper, package, box, brochure, sign, catalog, stationery, purchase order, invoice, advertisement, promotional material and other printed matter previously used and currently used in connection with marketing, advertising, promoting, distributing and selling products in connection with Petitioner's marks GRIZZLY and GRIZZLY BEAR SYMBOL.

### **Response to Request for Production No. 1:**

Objection. This request is vague and overbroad. Notwithstanding this objection, some of the documents responsive to this request are being transmitted with this response. Other documents responsive to this request will be produced at the Pucel offices in Cleveland, Ohio for inspection and possible copying.

## **REQUEST FOR PRODUCTION NO. 2**

Documents which identify all of the products advertised, sold or intended to be sold by Petitioner in connection with the marks GRIZZLY and GRIZZLY BEAR SYMBOL.

### **Response to Request for Production No. 2:**

See response to request no. 1.

### **REQUEST FOR PRODUCTION NO. 3**

All documents which refer or relate to Petitioner's first use of the marks GRIZZLY and GRIZZLY BEAR SYMBOL in the U.S.

#### **Response to Request for Production No. 3:**

See response to request no. 1 and also see copies of the registrations of the petitioner cited in the pleadings. Copies of the registrations are available from the PTO and information in regard to the registrations is available from the PTO website.

### **REQUEST FOR PRODUCTION NO. 4**

All documents which refer or relate to state and federal trademark registrations or applications for registration filed by Petitioner for the marks GRIZZLY and GRIZZLY BEAR SYMBOL either alone or in combination with other words, terms and /or designs.

#### **Response to Request for Production No. 4:**

See the file histories of the respective federal trademark registrations available from the United States Patent and Trademark Office.

### **REQUEST FOR PRODUCTION NO. 5**

All documents which refer or relate to any trademark search or investigation, conducted by or on behalf of Petitioner, regarding the mark GRIZZLY.

**Response to Request for Production No. 5:**

Objection. Privileged communications are within this request.

Notwithstanding this objection, see documents produced herewith which are not privileged.

**REQUEST FOR PRODUCTION NO. 6**

All documents which refer or relate to any market research or surveys, conducted by or on behalf of Petitioner, regarding the marks GRIZZLY and GRIZZLY BEAR SYMBOL and the products sold and distributed by Petitioner in connection with the marks GRIZZLY and GRIZZLY BEAR SYMBOL.

**Response to Request For Production No. 6:**

As presently advised, none.

**REQUEST FOR PRODUCTION NO. 7**

All documents which refer or relate to any market research or surveys, conducted by or on behalf of Petitioner, regarding Respondent's mark GRIZZLY and



the products sold and distributed by Respondent in connection with the mark GRIZZLY.

**Response to Request for Production No. 7:**

As presently advised, none.

**REQUEST FOR PRODUCTION NO. 8**

All documents which refer or relate to any marketing plans or reports, advertising reports, surveys, studies and correspondence related thereto, prepared by or on behalf of Petitioner, regarding Petitioner's marks GRIZZLY and GRIZZLY BEAR SYMBOL and the products sold and distributed by Petitioner in connection with said marks GRIZZLY and GRIZZLY BEAR SYMBOL.

**Response to Request for Production No. 8:**

As presently advised, none.

**REQUEST FOR PRODUCTION NO. 9**

All documents which refer or relate to the channels of trade in which Petitioner advertises and sells its products in connection with the marks GRIZZLY

and GRIZZLY BEAR SYMBOL.

**Response to Request for Production No. 9:**

See response to document request no. 1.

**REQUEST FOR PRODUCTION NO. 10**

All documents which identify or refer to the nature of business of  
Petitioner's customers (e.g. consumers, tradesmen, distributors, wholesalers, retailers,  
etc.).

**Response to Request for Production No. 10:**

As presently advised, none.

**REQUEST FOR PRODUCTION NO. 11**

Documents which show Petitioner's annual sales for each year from the date  
of first use to date, for:

- (a) all products;
- (b) all products in connection with which Petitioner used the marks

GRIZZLY and GRIZZLY BEAR SYMBOL.

**Response to Request for Production No. 11:**

Annual reports will be produced upon the entry of a protective order as the documents sought are highly confidential.

**REQUEST FOR PRODUCTION NO. 12**

Documents which show Petitioner's annual advertising and promotional expenses for all products sold or offered in connection with Petitioner's marks GRIZZLY and GRIZZLY BEAR SYMBOL for each year from the date of first use to the present.

**Response to Request for Production No. 12:**

Petitioner has produced annual advertising expenditures in response to corresponding interrogatories. Annual reports indicating these amounts will be produced upon the entry of a protective order as the documents sought are highly confidential.

**REQUEST FOR PRODUCTION NO. 13**

All documents which refer or relate to any instances of confusion, likelihood of confusion, mistake or deception between Respondent and Petitioner, their

respective marks, or their respective products.

**Response to Request for Production No. 13:**

See response to request no.1. Documents responsive to this request are produced herewith and other documents are available for inspection and copying.

**REQUEST FOR PRODUCTION NO. 14**

All documents which refer or relate to all instances where Petitioner has licensed or otherwise authorized others to use Petitioner's marks GRIZZLY and GRIZZLY BEAR SYMBOL.

**Response to Request for Production No. 14:**

None.

**REQUEST FOR PRODUCTION NO. 15**

All documents which refer or relate to any third party uses or users of the marks GRIZZLY and GRIZZLY BEAR SYMBOL, as a trademark, trade name, corporate name or company name.

**Response to Request for Production No. 15:**

See documents produced.

#### **REQUEST FOR PRODUCTION NO. 16**

All documents pertaining to any litigation, cancellation, opposition or adversary proceeding between Petitioner and any other party, which include an allegation of infringement, unfair competition, likelihood of confusion or dilution involving Petitioner's marks GRIZZLY and GRIZZLY BEAR SYMBOL.

##### **Response to Request for Production No. 16:**

See documents produced.

#### **REQUEST FOR PRODUCTION NO. 17**

All documents relating to all instances where anyone has ever inquired if there is a relationship between Respondent and Petitioner or their respective products.

##### **Response to Request for Production No. 17:**

See documents produced.

#### **REQUEST FOR PRODUCTION NO. 18**

All documents received by or in the custody or control of Petitioner which refer or relate to Respondent, the products of Respondent or the trademarks or trade names of Respondent.

**Response to Request for Production No. 18:**

See responses to other requests. These documents are produced herewith or are available for inspection and copying at the Pucel offices.

**REQUEST FOR PRODUCTION NO. 19**

All documents identified in or used to prepare the responses to Respondent's First Set of Interrogatories To Petitioner Nos. 1-21 which was served concurrently herewith.

**Response to Request for Production No. 19:**

See documents produced herewith and also see response to request no. 11.

**REQUEST FOR PRODUCTION NO. 20**

All documents which refer or relate to, or which support the allegations of Paragraph 8 of the Petition For Cancellation.

**Response to Request for Production No. 20:**

See responses to other requests. These documents are produced herewith or are available for inspection and copying at the Pucel offices.

#### **REQUEST FOR PRODUCTION NO. 21**

All documents which refer or relate to, or which support the allegations of Paragraph 9 of the Petition For Cancellation.

##### **Response to Request for Production No. 21:**

See responses to other requests. These documents are produced herewith or are available for inspection and copying at the Pucel offices.

#### **REQUEST FOR PRODUCTION NO. 22**

All documents which refer or relate to, or which support the allegations of Paragraph 10 of the Petition For Cancellation.

##### **Response to Request for Production No. 22:**

See responses to other requests. These documents are produced herewith or are available for inspection and copying at the Pucel offices.

#### **REQUEST FOR PRODUCTION NO. 23**

All documents which refer or relate to , or which support the allegations of Paragraph 11 of the Petition For Cancellation.

**Response to Request for Production No. 23:**

See responses to other requests. These documents are produced herewith or are available for inspection and copying at the Pucel offices.



**PUCEL ENTERPRISES, INC.**

By Kenneth L. Mitchell  
Charles R. Rust  
Kenneth L. Mitchell  
Woodling, Krost and Rust  
9213 Chillicothe Rd.  
Kirtland, Ohio  
(866) 241-4150

Attorneys for Petitioner  
Pucel Enterprises, Inc.

**CERTIFICATE OF SERVICE**

This is to certify that copies of the above **PETITIONER'S (PUCEL ENTERPRISES, INC.) RESPONSE TO RESPONDENT'S FIRST REQUEST FOR PRODUCTION** were mailed by U.S. First Class Mail, postage prepaid, to Joseph F. Schmidt, Michael Best & Friedrich LLC, 401 North Michigan Ave., Suite 1700, Chicago, IL 60611, attorneys for Respondent, this 5<sup>th</sup> day of October, 2001.

Kenneth L. Michael

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE  
Before The Trademark Trial and Appeal Board

PUCEL ENTERPRISES INC. )

Petitioner, )

v. )

GRIZZLY INDUSTRIAL INC. )

Respondent. )

CANCELLATION NO. 32,024  
Reg. No. 2,413,625

**PETITIONER'S (PUCEL ENTERPRISES INC.) RESPONSES TO  
RESPONDENT'S FIRST REQUEST FOR PRODUCTION**

**Pucel Enterprises, Inc. (Pucel) responds to Respondent's Grizzly  
Industrial, Inc. (Grizzly) first requests for production of documents and things as  
follows.**

**General Objections**

1. Certain of the information and identification of documents sought by  
Respondent, constitute confidential business information of Pucel. Pucel objects to  
the disclosure of such information or documents to Respondent on the ground that



disclosure of such information to Respondent would damage Pucel. In respect to information objected to only on this basis, Pucel is willing to produce the same subject to a suitable protective order or agreement.

2. Petitioner objects to each and every one of these requests to the extent that they are vague, ambiguous, overly broad and to the extent they seek information that is not relevant nor reasonably calculated to lead to the discovery of relevant evidence.

3. Petitioner objects to these requests to the extent that they seek information or documents protected from discovery by the attorney-client privilege or the work-product doctrine.

4. Petitioner objects to the requests in that they fail to specify a reasonable time, place and manner of making the inspection.

Subject to the above referred to objections and subject to the conditions set forth in responses to the specific requests, Petitioner will produce documents responsive to these requests at Pucel Enterprises, Inc., 1440 E. 36<sup>th</sup> Street, Cleveland, OH 44114 at a time and date as may be agreed upon between counsel.

## **REQUEST FOR PRODUCTION NO. 1**

A sample copy of every product, label, wrapper, package, box, brochure, sign, catalog, stationery, purchase order, invoice, advertisement, promotional material and other printed matter previously used and currently used in connection with marketing, advertising, promoting, distributing and selling products in connection with Petitioner's marks GRIZZLY and GRIZZLY BEAR SYMBOL.

### **Response to Request for Production No. 1:**

Objection. This request is vague and overbroad. Notwithstanding this objection, some of the documents responsive to this request are being transmitted with this response. Other documents responsive to this request will be produced at the Pucel offices in Cleveland, Ohio for inspection and possible copying.

## **REQUEST FOR PRODUCTION NO. 2**

Documents which identify all of the products advertised, sold or intended to be sold by Petitioner in connection with the marks GRIZZLY and GRIZZLY BEAR SYMBOL.

### **Response to Request for Production No. 2:**

See response to request no. 1.

### **REQUEST FOR PRODUCTION NO. 3**

All documents which refer or relate to Petitioner's first use of the marks GRIZZLY and GRIZZLY BEAR SYMBOL in the U.S.

#### **Response to Request for Production No. 3:**

See response to request no. 1 and also see copies of the registrations of the petitioner cited in the pleadings. Copies of the registrations are available from the PTO and information in regard to the registrations is available from the PTO website.

### **REQUEST FOR PRODUCTION NO. 4**

All documents which refer or relate to state and federal trademark registrations or applications for registration filed by Petitioner for the marks GRIZZLY and GRIZZLY BEAR SYMBOL either alone or in combination with other words, terms and /or designs.

#### **Response to Request for Production No. 4:**

See the file histories of the respective federal trademark registrations available from the United States Patent and Trademark Office.

### **REQUEST FOR PRODUCTION NO. 5**

All documents which refer or relate to any trademark search or investigation, conducted by or on behalf of Petitioner, regarding the mark GRIZZLY.

**Response to Request for Production No. 5:**

Objection. Privileged communications are within this request.

Notwithstanding this objection, see documents produced herewith which are not privileged.

**REQUEST FOR PRODUCTION NO. 6**

All documents which refer or relate to any market research or surveys, conducted by or on behalf of Petitioner, regarding the marks GRIZZLY and GRIZZLY BEAR SYMBOL and the products sold and distributed by Petitioner in connection with the marks GRIZZLY and GRIZZLY BEAR SYMBOL.

**Response to Request For Production No. 6:**

As presently advised, none.

**REQUEST FOR PRODUCTION NO. 7**

All documents which refer or relate to any market research or surveys, conducted by or on behalf of Petitioner, regarding Respondent's mark GRIZZLY and

the products sold and distributed by Respondent in connection with the mark GRIZZLY.

**Response to Request for Production No. 7:**

As presently advised, none.

**REQUEST FOR PRODUCTION NO. 8**

All documents which refer or relate to any marketing plans or reports, advertising reports, surveys, studies and correspondence related thereto, prepared by or on behalf of Petitioner, regarding Petitioner's marks GRIZZLY and GRIZZLY BEAR SYMBOL and the products sold and distributed by Petitioner in connection with said marks GRIZZLY and GRIZZLY BEAR SYMBOL.

**Response to Request for Production No. 8:**

As presently advised, none.

**REQUEST FOR PRODUCTION NO. 9**

All documents which refer or relate to the channels of trade in which Petitioner advertises and sells its products in connection with the marks GRIZZLY



and GRIZZLY BEAR SYMBOL.

**Response to Request for Production No. 9:**

See response to document request no. 1.

**REQUEST FOR PRODUCTION NO. 10**

All documents which identify or refer to the nature of business of  
Petitioner's customers (e.g. consumers, tradesmen, distributors, wholesalers, retailers,  
etc.).

**Response to Request for Production No. 10:**

As presently advised, none.

**REQUEST FOR PRODUCTION NO. 11**

Documents which show Petitioner's annual sales for each year from the date  
of first use to date, for:

- (a) all products;
- (b) all products in connection with which Petitioner used the marks

GRIZZLY and GRIZZLY BEAR SYMBOL.

**Response to Request for Production No. 11:**

Annual reports will be produced upon the entry of a protective order as the documents sought are highly confidential.

**REQUEST FOR PRODUCTION NO. 12**

Documents which show Petitioner's annual advertising and promotional expenses for all products sold or offered in connection with Petitioner's marks GRIZZLY and GRIZZLY BEAR SYMBOL for each year from the date of first use to the present.

**Response to Request for Production No. 12:**

Petitioner has produced annual advertising expenditures in response to corresponding interrogatories. Annual reports indicating these amounts will be produced upon the entry of a protective order as the documents sought are highly confidential.

**REQUEST FOR PRODUCTION NO. 13**

All documents which refer or relate to any instances of confusion, likelihood of confusion, mistake or deception between Respondent and Petitioner, their

respective marks, or their respective products.

**Response to Request for Production No. 13:**

See response to request no.1. Documents responsive to this request are produced herewith and other documents are available for inspection and copying.

**REQUEST FOR PRODUCTION NO. 14**

All documents which refer or relate to all instances where Petitioner has licensed or otherwise authorized others to use Petitioner's marks GRIZZLY and GRIZZLY BEAR SYMBOL.

**Response to Request for Production No. 14:**

None.

**REQUEST FOR PRODUCTION NO. 15**

All documents which refer or relate to any third party uses or users of the marks GRIZZLY and GRIZZLY BEAR SYMBOL, as a trademark, trade name, corporate name or company name.

**Response to Request for Production No. 15:**

See documents produced.

#### **REQUEST FOR PRODUCTION NO. 16**

All documents pertaining to any litigation, cancellation, opposition or adversary proceeding between Petitioner and any other party, which include an allegation of infringement, unfair competition, likelihood of confusion or dilution involving Petitioner's marks GRIZZLY and GRIZZLY BEAR SYMBOL.

##### **Response to Request for Production No. 16:**

See documents produced.

#### **REQUEST FOR PRODUCTION NO. 17**

All documents relating to all instances where anyone has ever inquired if there is a relationship between Respondent and Petitioner or their respective products.

##### **Response to Request for Production No. 17:**

See documents produced.

#### **REQUEST FOR PRODUCTION NO. 18**

All documents received by or in the custody or control of Petitioner which refer or relate to Respondent, the products of Respondent or the trademarks or trade names of Respondent.

**Response to Request for Production No. 18:**

See responses to other requests. These documents are produced herewith or are available for inspection and copying at the Pucel offices.

**REQUEST FOR PRODUCTION NO. 19**

All documents identified in or used to prepare the responses to Respondent's First Set of Interrogatories To Petitioner Nos. 1-21 which was served concurrently herewith.

**Response to Request for Production No. 19:**

See documents produced herewith and also see response to request no. 11.

**REQUEST FOR PRODUCTION NO. 20**

All documents which refer or relate to, or which support the allegations of Paragraph 8 of the Petition For Cancellation.

**Response to Request for Production No. 20:**

See responses to other requests. These documents are produced herewith or are available for inspection and copying at the Pucel offices.

#### **REQUEST FOR PRODUCTION NO. 21**

All documents which refer or relate to, or which support the allegations of Paragraph 9 of the Petition For Cancellation.

##### **Response to Request for Production No. 21:**

See responses to other requests. These documents are produced herewith or are available for inspection and copying at the Pucel offices.

#### **REQUEST FOR PRODUCTION NO. 22**

All documents which refer or relate to, or which support the allegations of Paragraph 10 of the Petition For Cancellation.

##### **Response to Request for Production No. 22:**

See responses to other requests. These documents are produced herewith or are available for inspection and copying at the Pucel offices.

#### **REQUEST FOR PRODUCTION NO. 23**

All documents which refer or relate to , or which support the allegations of Paragraph 11 of the Petition For Cancellation.

**Response to Request for Production No. 23:**

See responses to other requests. These documents are produced herewith or are available for inspection and copying at the Pucel offices.

**PUCEL ENTERPRISES, INC.**

By Kenneth L. Mitchell

Charles R. Rust  
Kenneth L. Mitchell  
Woodling, Krost and Rust  
9213 Chillicothe Rd.  
Kirtland, Ohio  
(866) 241-4150

Attorneys for Petitioner  
Pucel Enterprises, Inc.



**CERTIFICATE OF SERVICE**

This is to certify that copies of the above **PETITIONER'S (PUCEL ENTERPRISES, INC.) RESPONSE TO RESPONDENT'S FIRST REQUEST FOR PRODUCTION** were mailed by U.S. First Class Mail, postage prepaid, to Joseph F. Schmidt, Michael Best & Friedrich LLC, 401 North Michigan Ave., Suite 1700, Chicago, IL 60611, attorneys for Respondent, this 5<sup>th</sup> day of October, 2001.

Kenneth L. Whitford

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IN THE UNITED STATES PATENT AND TRADEMARK OFFICE  
Before The Trademark Trial and Appeal Board

PUCEL ENTERPRISES INC. )

Petitioner, )

v. )

GRIZZLY INDUSTRIAL INC. )

Respondent. )

) CANCELLATION NO. 32,025  
) Reg. No. 2,312,226

( )  
**PETITIONER'S (PUCEL ENTERPRISES INC.) RESPONSES TO  
RESPONDENT'S FIRST REQUEST FOR PRODUCTION**

**Pucel Enterprises, Inc. (Pucel) responds to Respondent's Grizzly  
Industrial, Inc. (Grizzly) first requests for production of documents and things as  
follows.**

**General Objections**

1. Certain of the information and identification of documents sought by  
Respondent, constitute confidential business information of Pucel. Pucel objects to  
the disclosure of such information or documents to Respondent on the ground that



disclosure of such information to Respondent would damage Pucel. In respect to information objected to only on this basis, Pucel is willing to produce the same subject to a suitable protective order or agreement.

2. Petitioner objects to each and every one of these requests to the extent that they are vague, ambiguous, overly broad and to the extent they seek information that is not relevant nor reasonably calculated to lead to the discovery of relevant evidence.

3. Petitioner objects to these requests to the extent that they seek information or documents protected from discovery by the attorney-client privilege or the work-product doctrine.

4. Petitioner objects to the requests in that they fail to specify a reasonable time, place and manner of making the inspection.

Subject to the above referred to objections and subject to the conditions set forth in responses to the specific requests, Petitioner will produce documents responsive to these requests at Pucel Enterprises, Inc., 1440 E. 36<sup>th</sup> Street, Cleveland, OH 44114 at a time and date as may be agreed upon between counsel.

## **REQUEST FOR PRODUCTION NO. 1**

A sample copy of every product, label, wrapper, package, box, brochure, sign, catalog, stationery, purchase order, invoice, advertisement, promotional material and other printed matter previously used and currently used in connection with marketing, advertising, promoting, distributing and selling products in connection with Petitioner's marks GRIZZLY and GRIZZLY BEAR SYMBOL.

### **Response to Request for Production No. 1:**

Objection. This request is vague and overbroad. Notwithstanding this objection, some of the documents responsive to this request are being transmitted with this response. Other documents responsive to this request will be produced at the Pucel offices in Cleveland, Ohio for inspection and possible copying.

## **REQUEST FOR PRODUCTION NO. 2**

Documents which identify all of the products advertised, sold or intended to be sold by Petitioner in connection with the marks GRIZZLY and GRIZZLY BEAR SYMBOL.

### **Response to Request for Production No. 2:**

See response to request no. 1.

### **REQUEST FOR PRODUCTION NO. 3**

All documents which refer or relate to Petitioner's first use of the marks GRIZZLY and GRIZZLY BEAR SYMBOL in the U.S.

#### **Response to Request for Production No. 3:**

See response to request no. 1 and also see copies of the registrations of the petitioner cited in the pleadings. Copies of the registrations are available from the PTO and information in regard to the registrations is available from the PTO website.

### **REQUEST FOR PRODUCTION NO. 4**

All documents which refer or relate to state and federal trademark registrations or applications for registration filed by Petitioner for the marks GRIZZLY and GRIZZLY BEAR SYMBOL either alone or in combination with other words, terms and /or designs.

#### **Response to Request for Production No. 4:**

See the file histories of the respective federal trademark registrations available from the United States Patent and Trademark Office.

### **REQUEST FOR PRODUCTION NO. 5**

All documents which refer or relate to any trademark search or investigation, conducted by or on behalf of Petitioner, regarding the mark GRIZZLY.

**Response to Request for Production No. 5:**

Objection. Privileged communications are within this request.

Notwithstanding this objection, see documents produced herewith which are not privileged.

**REQUEST FOR PRODUCTION NO. 6**

All documents which refer or relate to any market research or surveys, conducted by or on behalf of Petitioner, regarding the marks GRIZZLY and GRIZZLY BEAR SYMBOL and the products sold and distributed by Petitioner in connection with the marks GRIZZLY and GRIZZLY BEAR SYMBOL.

**Response to Request For Production No. 6:**

As presently advised, none.

**REQUEST FOR PRODUCTION NO. 7**

All documents which refer or relate to any market research or surveys, conducted by or on behalf of Petitioner, regarding Respondent's mark GRIZZLY and

the products sold and distributed by Respondent in connection with the mark GRIZZLY.

**Response to Request for Production No. 7:**

As presently advised, none.

**REQUEST FOR PRODUCTION NO. 8**

All documents which refer or relate to any marketing plans or reports, advertising reports, surveys, studies and correspondence related thereto, prepared by or on behalf of Petitioner, regarding Petitioner's marks GRIZZLY and GRIZZLY BEAR SYMBOL and the products sold and distributed by Petitioner in connection with said marks GRIZZLY and GRIZZLY BEAR SYMBOL.

**Response to Request for Production No. 8:**

As presently advised, none.

**REQUEST FOR PRODUCTION NO. 9**

All documents which refer or relate to the channels of trade in which Petitioner advertises and sells its products in connection with the marks GRIZZLY

and GRIZZLY BEAR SYMBOL.

**Response to Request for Production No. 9:**

See response to document request no. 1.

**REQUEST FOR PRODUCTION NO. 10**

All documents which identify or refer to the nature of business of  
Petitioner's customers (e.g. consumers, tradesmen, distributors, wholesalers, retailers,  
etc.).

**Response to Request for Production No. 10:**

As presently advised, none.

**REQUEST FOR PRODUCTION NO. 11**

Documents which show Petitioner's annual sales for each year from the date  
of first use to date, for:

- (a) all products;
- (b) all products in connection with which Petitioner used the marks

GRIZZLY and GRIZZLY BEAR SYMBOL.



**Response to Request for Production No. 11:**

Annual reports will be produced upon the entry of a protective order as the documents sought are highly confidential.

**REQUEST FOR PRODUCTION NO. 12**

Documents which show Petitioner's annual advertising and promotional expenses for all products sold or offered in connection with Petitioner's marks GRIZZLY and GRIZZLY BEAR SYMBOL for each year from the date of first use to the present.

**Response to Request for Production No. 12:**

Petitioner has produced annual advertising expenditures in response to corresponding interrogatories. Annual reports indicating these amounts will be produced upon the entry of a protective order as the documents sought are highly confidential.

**REQUEST FOR PRODUCTION NO. 13**

All documents which refer or relate to any instances of confusion, likelihood of confusion, mistake or deception between Respondent and Petitioner, their

respective marks, or their respective products.

**Response to Request for Production No. 13:**

See response to request no.1. Documents responsive to this request are produced herewith and other documents are available for inspection and copying.

**REQUEST FOR PRODUCTION NO. 14**

All documents which refer or relate to all instances where Petitioner has licensed or otherwise authorized others to use Petitioner's marks GRIZZLY and GRIZZLY BEAR SYMBOL.

**Response to Request for Production No. 14:**

None.

**REQUEST FOR PRODUCTION NO. 15**

All documents which refer or relate to any third party uses or users of the marks GRIZZLY and GRIZZLY BEAR SYMBOL, as a trademark, trade name, corporate name or company name.

**Response to Request for Production No. 15:**

See documents produced.

**REQUEST FOR PRODUCTION NO. 16**

All documents pertaining to any litigation, cancellation, opposition or adversary proceeding between Petitioner and any other party, which include an allegation of infringement, unfair competition, likelihood of confusion or dilution involving Petitioner's marks GRIZZLY and GRIZZLY BEAR SYMBOL.

**Response to Request for Production No. 16:**

See documents produced.

**REQUEST FOR PRODUCTION NO. 17**

All documents relating to all instances where anyone has ever inquired if there is a relationship between Respondent and Petitioner or their respective products.

**Response to Request for Production No. 17:**

See documents produced.

**REQUEST FOR PRODUCTION NO. 18**

All documents received by or in the custody or control of Petitioner which refer or relate to Respondent, the products of Respondent or the trademarks or trade names of Respondent.

**Response to Request for Production No. 18:**

See responses to other requests. These documents are produced herewith or are available for inspection and copying at the Pucel offices.

**REQUEST FOR PRODUCTION NO. 19**

All documents identified in or used to prepare the responses to Respondent's First Set of Interrogatories To Petitioner Nos. 1-21 which was served concurrently herewith.

**Response to Request for Production No. 19:**

See documents produced herewith and also see response to request no. 11.

**REQUEST FOR PRODUCTION NO. 20**

All documents which refer or relate to, or which support the allegations of Paragraph 8 of the Petition For Cancellation.

**Response to Request for Production No. 20:**

See responses to other requests. These documents are produced herewith or are available for inspection and copying at the Pucel offices.

#### **REQUEST FOR PRODUCTION NO. 21**

All documents which refer or relate to, or which support the allegations of Paragraph 9 of the Petition For Cancellation.

##### **Response to Request for Production No. 21:**

See responses to other requests. These documents are produced herewith or are available for inspection and copying at the Pucel offices.

#### **REQUEST FOR PRODUCTION NO. 22**

All documents which refer or relate to, or which support the allegations of Paragraph 10 of the Petition For Cancellation.

##### **Response to Request for Production No. 22:**

See responses to other requests. These documents are produced herewith or are available for inspection and copying at the Pucel offices.

#### **REQUEST FOR PRODUCTION NO. 23**

All documents which refer or relate to , or which support the allegations of Paragraph 11 of the Petition For Cancellation.

**Response to Request for Production No. 23:**

See responses to other requests. These documents are produced herewith or are available for inspection and copying at the Pucel offices.

**PUCEL ENTERPRISES, INC.**

By Kenneth L. Mitchell

Charles R. Rust  
Kenneth L. Mitchell  
Woodling, Krost and Rust  
9213 Chillicothe Rd.  
Kirtland, Ohio  
(866) 241-4150

Attorneys for Petitioner  
Pucel Enterprises, Inc.

**CERTIFICATE OF SERVICE**

This is to certify that copies of the above **PETITIONER'S (PUCEL ENTERPRISES, INC.) RESPONSE TO RESPONDENT'S FIRST REQUEST FOR PRODUCTION** were mailed by U.S. First Class Mail, postage prepaid, to Joseph F. Schmidt, Michael Best & Friedrich LLC, 401 North Michigan Ave., Suite 1700, Chicago, IL 60611, attorneys for Respondent, this 5<sup>th</sup> day of October, 2001.

Kenneth L. Mitchell



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**OPPOSITION NO. 123,506**  
**Serial No.76/088,346**

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### General Objections

1. Certain of the information and identification of documents sought by Applicant, constitute confidential business information of Pucel. Pucel objects to the disclosure of such information or documents to Applicant on the ground that disclosure of such information to Applicant would damage Pucel. In respect to



information objected to only on this basis, Pucel is willing to produce the same subject to a suitable protective order or agreement.

2. Opposer objects to each and every one of these requests to the extent that they are vague, ambiguous, overly broad and to the extent they seek information that is not relevant nor reasonably calculated to lead to the discovery of relevant evidence.

3. Opposer objects to these requests to the extent that they seek information or documents protected from discovery by the attorney-client privilege or the work-product doctrine.

4. Opposer objects to the requests in that they fail to specify a reasonable time, place and manner of making the inspection.

Subject to the above referred to objections and subject to the conditions set forth in responses to the specific requests, Opposer will produce documents responsive to these requests at Pucel Enterprises, Inc., 1440 E. 36<sup>th</sup> Street, Cleveland, OH 44114 at a time and date as may be agreed upon between counsel.

## **REQUEST FOR PRODUCTION NO. 1**

A sample copy of every product, label, wrapper, package, box, brochure, sign, catalog, stationery, purchase order, invoice, advertisement, promotional material and other printed matter previously used and currently used in connection with marketing, advertising, promoting, distributing and selling products in connection with opposer's marks GRIZZLY and GRIZZLY BEAR SYMBOL.

### **Response to Request for Production No. 1:**

Objection. This request is vague and overbroad. Notwithstanding this objection, some of the documents responsive to this request are being transmitted with this response. Other documents responsive to this request will be produced at the Pucel offices in Cleveland, Ohio for inspection and possible copying.

## **REQUEST FOR PRODUCTION NO. 2**

Documents which identify all of the products advertised, sold or intended to be sold by opposer in connection with the marks GRIZZLY and GRIZZLY BEAR SYMBOL.

### **Response to Request for Production No. 2:**

See response to request no. 1.

### **REQUEST FOR PRODUCTION NO. 3**

All documents which refer or relate to opposer's first use of the marks GRIZZLY and GRIZZLY BEAR SYMBOL in the U.S.

#### **Response to Request for Production No. 3:**

See response to request no. 1 and also see copies of the registrations of the petitioner cited in the pleadings. Copies of the registrations are available from the PTO and information in regard to the registrations is available from the PTO website.

### **REQUEST FOR PRODUCTION NO. 4**

All documents which refer or relate to state and federal trademark registrations or applications for registration filed by opposer for the marks GRIZZLY and GRIZZLY BEAR SYMBOL either alone or in combination with other words, terms and /or designs.

#### **Response to Request for Production No. 4:**

See the file histories of the respective federal trademark registrations available from the United States Patent and Trademark Office.

### **REQUEST FOR PRODUCTION NO. 5**

All documents which refer or relate to any trademark search or investigation, conducted by or on behalf of opposer, regarding the mark GRIZZLY.

**Response to Request for Production No. 5:**

Objection. Privileged communications are within this request.

Notwithstanding this objection, see documents produced herewith which are not privileged.

**REQUEST FOR PRODUCTION NO. 6**

All documents which refer or relate to any market research or surveys, conducted by or on behalf of opposer, regarding the marks GRIZZLY and GRIZZLY BEAR SYMBOL and the products sold and distributed by opposer in connection with the marks GRIZZLY and GRIZZLY BEAR SYMBOL.

**Response to Request For Production No. 6:**

As presently advised, none.

**REQUEST FOR PRODUCTION NO. 7**

All documents which refer or relate to any market research or surveys, conducted by or on behalf of opposer, regarding applicant's mark GRIZZLY and the

products sold and distributed by applicant in connection with the mark GRIZZLY.

**Response to Request for Production No. 7:**

As presently advised, none.

**REQUEST FOR PRODUCTION NO. 8**

All documents which refer or relate to any marketing plans or reports, advertising reports, surveys, studies and correspondence related thereto, prepared by or on behalf of opposer, regarding opposer's marks GRIZZLY and GRIZZLY BEAR SYMBOL and the products sold and distributed by opposer in connection with said marks GRIZZLY and GRIZZLY BEAR SYMBOL.

**Response to Request for Production No. 8:**

As presently advised, none.

**REQUEST FOR PRODUCTION NO. 9**

All documents which refer or relate to the channels of trade in which opposer advertises and sells its products in connection with the marks GRIZZLY and GRIZZLY BEAR SYMBOL.

**Response to Request for Production No. 9:**

See response to document request no. 1.

#### **REQUEST FOR PRODUCTION NO. 10**

All documents which identify or refer to the nature of business of opposer's customers (e.g. consumers, tradesmen, distributors, wholesalers, retailers, etc.).

##### **Response to Request for Production No. 10:**

As presently advised, none.

#### **REQUEST FOR PRODUCTION NO. 11**

Documents which show opposer's annual sales for each year from the date of first use to date, for:

- (a) all products;
- (b) all products in connection with which opposer used the marks

GRIZZLY and GRIZZLY BEAR SYMBOL.

##### **Response to Request for Production No. 11:**

Annual reports will be produced upon the entry of a protective order as the documents sought are highly confidential.

## **REQUEST FOR PRODUCTION NO. 12**

Documents which show opposer's annual advertising and promotional expenses for all products sold or offered in connection with opposer's marks GRIZZLY and GRIZZLY BEAR SYMBOL for each year from the date of first use to the present.

### **Response to Request for Production No. 12:**

Petitioner has produced annual advertising expenditures in response to corresponding interrogatories. Annual reports indicating these amounts will be produced upon the entry of a protective order as the documents sought are highly confidential.

## **REQUEST FOR PRODUCTION NO. 13**

All documents which refer or relate to any instances of confusion, likelihood of confusion, mistake or deception between applicant and opposer, their respective marks, or their respective products.

### **Response to Request for Production No. 13:**

See response to request no.1. Documents responsive to this request are produced herewith and other documents are available for inspection and copying.



#### **REQUEST FOR PRODUCTION NO. 14**

All documents which refer or relate to all instances where opposer has licensed or otherwise authorized others to use opposer's marks GRIZZLY and GRIZZLY BEAR SYMBOL.

##### **Response to Request for Production No. 14:**

None.

#### **REQUEST FOR PRODUCTION NO. 15**

All documents which refer or relate to any third party uses or users of the marks GRIZZLY and GRIZZLY BEAR SYMBOL, as a trademark, trade name, corporate name or company name.

##### **Response to Request for Production No. 15:**

See documents produced.

#### **REQUEST FOR PRODUCTION NO. 16**

All documents pertaining to any litigation, cancellation, opposition or adversary proceeding between opposer and any other party, which include an allegation of infringement, unfair competition, likelihood of confusion or dilution

involving opposer's marks GRIZZLY and GRIZZLY BEAR SYMBOL.

**Response to Request for Production No. 16:**

See documents produced.

**REQUEST FOR PRODUCTION NO. 17**

All documents relating to all instances where anyone has ever inquired if there is a relationship between applicant and opposer or their respective products.

**Response to Request for Production No. 17:**

See documents produced.

**REQUEST FOR PRODUCTION NO. 18**

All documents received by or in the custody or control of opposer which refer or relate to applicant, the products of applicant or the trademarks or trade names of applicant.

**Response to Request for Production No. 18:**

See responses to other requests. These documents are produced herewith or are available for inspection and copying at the Pucel offices.

### **REQUEST FOR PRODUCTION NO. 19**

All documents identified in or used to prepare the responses to Applicant's First Set of Interrogatories To Opposer Nos. 1-21 which was served concurrently herewith.

#### **Response to Request for Production No. 19:**

See documents produced herewith and also see response to request no. 11.

### **REQUEST FOR PRODUCTION NO. 20**

All documents which refer or relate to, or which support the allegations of Paragraph 7 of the Notice of Opposition.

#### **Response to Request for Production No. 20:**

See responses to other requests. These documents are produced herewith or are available for inspection and copying at the Pucel offices.

### **REQUEST FOR PRODUCTION NO. 21**

All documents which refer or relate to, or which support the allegations of Paragraph 8 of the Notice of Opposition.

#### **Response to Request for Production No. 21:**

See responses to other requests. These documents are produced herewith or are available for inspection and copying at the Pucel offices.

## **REQUEST FOR PRODUCTION NO. 22**

All documents which refer or relate to, or which support the allegations of Paragraph 9 of the Notice of Opposition.

### **Response to Request for Production No. 22:**

See responses to other requests. These documents are produced herewith or are available for inspection and copying at the Pucel offices.

**PUCEL ENTERPRISES, INC.**

By Kenneth L. Mitchell

Charles R. Rust  
Kenneth L. Mitchell  
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(866) 241-4150

Attorneys for Opposer  
Pucel Enterprises, Inc.

**CERTIFICATE OF SERVICE**

This is to certify that copies of the above **OPPOSER'S (PUCEL ENTERPRISES, INC.) RESPONSE TO APPLICANT'S FIRST REQUEST FOR PRODUCTION** were mailed by U.S. First Class Mail, postage prepaid, to Joseph F. Schmidt, Michael Best & Friedrich LLC, 401 North Michigan Ave., Suite 1700, Chicago, IL 60611, attorneys for Applicant, this 5<sup>th</sup> day of October, 2001.

Kenneth L. Mitchell

THE U.S. PATENT & TRADEMARK OFFICE  
OFFICIAL MAILROOM STAMP AFFIXED HERETO  
ACKNOWLEDGES RECEIPT OF:

ENCLOSURES:

- ( ) Drawing(s) \_\_\_\_\_ (F) \_\_\_\_\_ (INF.) \_\_\_\_\_
- ( ) Check \$ \_\_\_\_\_ No: \_\_\_\_\_
- ( ) Citation Prior Art
- ( ) Claim Priority
- ( ) Extension of Time
- ( ) Communication to Examiner
- ( ) Amendment
- ( ) Response to paper / of act. dated \_\_\_\_\_
- ( ) Amendment after FINAL Rejection
- ( ) PTO Fee Form \_\_\_\_\_
- ( ) Assignment & Recordation Form Cover Sheet
- ( ) Certified copy of \_\_\_\_\_
- (x) Motion to Compel Discovery
- ( ) \_\_\_\_\_
- ( ) \_\_\_\_\_
- ( ) \_\_\_\_\_

RE: APPLICATION

ATTY / SEC JFS/LedR

Applicant: Grizzly Industrial

Our File No: 205670-900Y S.N. \_\_\_\_\_

Filed On \_\_\_\_\_

For: \_\_\_\_\_

DATE DUE \_\_\_\_\_ DATE SENT: 12-27-02